

## Copthorne Neighbourhood Plan

### Habitats Regulations Assessment Screening Report

Produced for Regulation 16 of the Neighbourhood Planning (General) Regulations 2012

5<sup>th</sup> February 2021

#### 1.0 Introduction

1.1 This Habitats Regulations Assessment (HRA) screening report has been undertaken by Mid Sussex District Council in respect of the Copthorne Neighbourhood Plan which has been produced by Worth Parish Council in accordance with the Neighbourhood Planning (General) Regulations 2012. This HRA screening report accompanies the Copthorne Neighbourhood Plan produced for Regulation 16 of the Neighbourhood Planning (General) Regulations 2012.

1.2 The Copthorne Neighbourhood Plan has been produced to guide development within the parish up to 2031. The Neighbourhood Plan sets out a vision for Copthorne:

‘In 2031, Copthorne will be a thriving and attractive village community set in unspoilt and accessible countryside that provides an excellent quality of life for residents, visitors, and those who work in, or travel through, the area.’

(Copthorne Neighbourhood Plan, February 2021: page 7)

1.3 If the Copthorne Neighbourhood Plan is approved by the local community through a referendum and subsequently made by Mid Sussex District Council, it will be used in determining planning applications within the Neighbourhood Plan Area, as part of the development plan.

1.4 The aim of this HRA screening report is to assess whether there are any likely significant effects on European sites within relative proximity to the Neighbourhood Plan Area (Appendix 1).

1.5 Much of the information used for this screening report has been developed through the HRA for the Mid Sussex District Plan 2014-2031 which was adopted in March 2018. It is considered that the background information in the District Plan HRA can be used for this screening report of the Copthorne Neighbourhood Plan and as such, this screening report should be read in conjunction with it.

1.6 Further detail can be found in the [HRA for the Mid Sussex District Plan](#), other [supporting documents](#) and the [District Plan](#).

1.7 In producing this HRA screening report, the following guidance has been taken into account:

- David Tyldesley and Associates (for Scottish Natural Heritage) (August 2012) Habitats Regulations Appraisal of Plans: Guidance for Plan-making Bodies in Scotland – Version 2.0<sup>1</sup>
- David Tyldesley and Associates (for the Countryside Council for Wales) (September 2012) Draft Guidance for Plan Making Authorities in Wales: The Appraisal of Plans Under the Habitats Directive<sup>2</sup>

It is noted that there is a different legislative framework in Scotland, however, in the absence of formal guidance for England, Natural England has recommended the use of this guidance for Scottish Natural Heritage.

## 2.0 Legislative Background

- 2.1 The Natura 2000 network consists of sites across Europe designated for their nature conservation importance. It aims to be an ecologically coherent network of designated sites that protect threatened species and habitats. The Natura 2000 network is formed of Special Areas of Conservation for species, plants and habitats and Special Protection Areas for bird species. Special Areas of Conservation (SACs) are designated under the European Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the ‘Habitats Directive’). Special Protection Areas (SPAs) are classified under the European Council Directive 2009/147/EC on the conservation of wild birds (the ‘Birds Directive’).
- 2.2 To help protect the Natura 2000 network, there are particular requirements for plans and projects. Article 6(3) of the Habitats Directive states:

‘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 site’s conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public’.

The Habitats Directive is clear that an ‘appropriate assessment’ of a plan or project applies to both Special Areas of Conservation and Special Protection Areas (see also Article 7).

- 2.3 The Conservation of Habitats and Species Regulations 2017 (the ‘Habitats Regulations’), the UK’s transposition of the Habitats Directive and Regulation 105, provides:

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<sup>1</sup> <http://www.snh.gov.uk/planning-and-development/environmental-assessment/habitat-regulations-appraisal/>

<sup>2</sup> <http://www.ccg.gov.uk/landscape--wildlife/managing-land-and-sea/environmental-assessment/habitats-regulations-assessmen.aspx>

- (1) Where a land use plan –
- (a) is likely to have a significant effect on a European site or a European offshore marine site (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, the plan-making authority for that plan must, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site's conservation objectives'.

2.4 This means that any proposed plan that may affect a European site (Special Area of Conservation or Special Protection Area) must first undergo an assessment to look at its potential impacts applying the precautionary principle. This is to determine if the plan will adversely affect the integrity of the European site(s) concerned. This process is known as a Habitats Regulations Assessment and the first stage considers any likely significant effects (the screening stage). An appropriate assessment is the second stage of the HRA process and a plan should undertake this where likely significant effects are identified at the screening stage. The appropriate assessment looks at the implications of a plan for a European site in view of the site's conservation objectives. Mitigation measures may be introduced at the appropriate assessment stage to avoid or reduce the effects of a plan on the European site(s). Before a plan may be given effect, the plan-making authority as competent authority must ascertain that it would not adversely affect the integrity of the European site(s).

2.5 In terms of neighbourhood plans, the Neighbourhood Planning (General) Regulations 2012 require a submitted neighbourhood plan to include a statement explaining how the proposed neighbourhood development plan meets the basic conditions set out in paragraph 8 of Schedule 4B of the Town and Country Planning Act 1990<sup>3</sup>. One of these basic conditions is that the neighbourhood plan must be compatible with EU obligations and needs to demonstrate that it is not likely to have a significant effect on a European site.

### **3.0 European Site Information**

3.1 The first step of the screening process is to consider the European sites that could be affected by a plan. Five such sites<sup>4</sup> were identified through the District Plan HRA process, and of these, the screening for the District Plan identified likely significant effects on the Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC) as a result of recreational disturbance and atmospheric pollution. Ashdown Forest lies adjacent to the north-east boundary of Mid Sussex and within Wealden District and, therefore, is not within the Neighbourhood Plan Area.

3.2 The Ashdown Forest SPA was classified in 1996. It is a 3,200Ha site comprising predominantly of lowland heathland and woodland. The Ashdown Forest SPA is an internationally important habitat classified because of the presence of breeding populations

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<sup>3</sup> Regulation 15(1)(d).

<sup>4</sup> Ashdown Forest SPA, Ashdown Forest SAC, Castle Hill SAC, Lewes Downs SAC, and Mole Gap to Reigate Escarpment SAC.

of Dartford warbler *Sylvia undata* and European nightjar *Caprimulgus europaeus*. Ashdown Forest is also notified as a Site of Special Scientific Interest (SSSI).

- 3.3 The Ashdown Forest SAC was designated in 2005 and covers 2,700Ha. It has a different boundary to the SPA, but the two designations overlap (Appendix 1). The qualifying features for the designation are the Annex I habitats: Northern Atlantic wet heaths with *Erica tetralix* and European dry heaths, and the Annex II species: Great crested newt *Triturus cristatus*. It is also part of the SSSI.
- 3.4 Further environmental details can be found in the HRA for the Mid Sussex District Plan (see Chapter 3: European Sites).

#### **4.0 Habitats Regulations Assessment for the Mid Sussex District Plan**

- 4.1 The potential effects of development on Ashdown Forest were assessed during the HRA process for the Mid Sussex District Plan. The screening exercise carried out in late 2007 and early 2008 found likely significant effects<sup>5</sup> on the Ashdown Forest SPA as a result of increased recreational activity arising from new residential development and related population growth that is likely to disturb the ground-nesting birds. Further information can be found in the HRA for the Mid Sussex District Plan (see Chapter 6: Disturbance Impact Pathways).
- 4.2 Data analysis of a survey investigating visitor access patterns at Ashdown Forest found that the majority of regular visitors originated from within a 7km distance from Ashdown Forest. Within this 7km 'zone of influence', measures to reduce recreational pressure would be most effective, therefore, residential development leading to a net increase in dwellings will need to contribute to an appropriate level of mitigation. This will be in the form of providing a Suitable Alternative Natural Greenspace (SANG), either on the development site itself or through a financial contribution towards a strategic SANG, and a separate financial contribution towards a Strategic Access Management and Monitoring (SAMM) strategy. An assessment of reasonable alternatives to the 7km zone of influence and the mitigation approach has been made in the [District Plan Sustainability Appraisal](#) (Incorporating Strategic Environmental Assessment) (November 2017). It is considered that that assessment can be applied to the HRAs for neighbourhood plans.
- 4.3 In terms of atmospheric pollution, the [Mid Sussex Transport Study](#) indicates that projected traffic increases are well below the threshold deemed as significant and, therefore, the HRA report concludes that significant effects are unlikely and no further measures are necessary. In order to promote good practice, however, the emerging District Plan contains measures to encourage sustainable transport and the requirements for avoidance and mitigation in relation to air pollution.

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<sup>5</sup> Based on current evidence, it cannot be shown that there will not be a likely significant effect, so applying the precautionary principle, the HRA considers that proposals resulting in new residential development will have a likely significant effect on Ashdown Forest.

- 4.4 Policy DP17 in the District Plan 2014-2031 (March 2018) outlines the proposed approach to protecting Ashdown Forest. Any residential development allocation included within the Copthorne Neighbourhood Plan will be subject to the requirements of the District Plan policy for the Ashdown Forest SPA and SAC or the approach being implemented at the time of a planning application.
- 4.5 The District Plan HRA considered that some housing allocations in the District would be through neighbourhood plans. The expected level of development was taken into account and as such, it is considered that the District Plan HRA can be used as background information for the HRAs of neighbourhood plans. Currently, as advised by Natural England, all planning applications proposing a net increase in residential dwellings within the 7km zone around the Ashdown Forest SPA will be required to mitigate their effects of increased recreational pressure in the form of providing two separate financial contributions towards SANG and SAMM measures. The [East Court and Ashplats Wood SANG Strategy](#) has been agreed by the District Council and a [Joint SAMM Strategy](#) has been approved by Natural England.

## **5.0 Screening Assessment for the Copthorne Neighbourhood Plan**

- 5.1 The screening assessment has regard to the conservation objectives of the Ashdown Forest SPA and SAC. It also makes reference to other plans and projects (the Mid Sussex District Plan 2014-2031 and other neighbourhood plans in Mid Sussex). Key questions relating to the neighbourhood plan are included below and along with the screening assessment, help to establish if an appropriate assessment is required.

### **5.2 Is the Copthorne Neighbourhood Plan directly connected with, or necessary to the management of a European site for nature conservation?**

From review of the Copthorne Neighbourhood Plan, it is considered that it is not directly connected with, or necessary to the nature conservation management of Ashdown Forest, and so a Habitats Regulations Assessment is required.

### **5.3 Does the Copthorne Neighbourhood Plan propose new development or allocate sites for development?**

No – but Policy CNP1 sets out the general requirements for development proposals and Policy CNP2 sets out the requirements for infill development.

### **5.4 Are there any other projects or plans that together with the Copthorne Neighbourhood Plan could impact on the integrity of a European site, the 'in combination' impact?**

Yes, the Mid Sussex District Plan 2014-2031 and other neighbourhood plans being produced in the District, especially those within the 7km zone. It is considered that the level of development proposed in the Copthorne Neighbourhood Plan has been assessed as part of the housing strategy considered through the District Plan HRA.

The Copthorne Neighbourhood Plan may also have an in combination effect with other plans being produced by local authorities that have land within the 7km zone, such as Wealden District Council, Lewes District Council and Tunbridge Wells Borough Council. It is understood though that with regards to recreational disturbance, Wealden District Council and Lewes District Council will be making provision for SANG and contributing to the wider Joint SAMM Strategy. Any relevant development in Tunbridge Wells Borough will be making a contribution towards SAMM measures.

### **Atmospheric Pollution**

- 5.5 In March 2017, the High Court handed down a judgment in relation to nitrogen deposition on the Ashdown Forest SAC. Wealden District Council brought a legal challenge against the Joint Core Strategy prepared by Lewes District Council and the South Downs National Park Authority. The legal challenge centred on the assessment of air quality impact on the Ashdown Forest SAC which was based on advice provided by Natural England. The *Wealden* judgment found that the advice provided by Natural England on the in combination assessment was flawed and the outcome was that the judge quashed part of the Joint Core Strategy.
- 5.6 The potential air quality impacts on the Ashdown Forest SAC arise from additional nitrogen deposition resulting from increased traffic emissions as a consequence of new development. Natural England had advised that the Design Manual for Roads and Bridges could be used to assess air quality impacts, applying the 1,000 Annual Average Daily Traffic methodology. It was advised that if the development proposals in a Plan by itself were calculated to be below 1,000 AADT, then the air pollution impacts could be considered not significant and no further work would be needed.
- 5.7 The judge had to consider if development could be screened out for Habitats Regulations purposes if the development did not cause an increase of more than 1,000 AADT on roads within and surrounding Ashdown Forest where the assessment looked at the effects of the development by itself (alone). However, the judge found that the advice provided by Natural England was erroneous and that an assessment of air quality impact should include other development proposals thus considering the in combination effect of nitrogen deposition from increased traffic.
- 5.8 However, the judge gave no ruling as to the practical effects of the judgment. The parameters for any assessment of traffic impact are now unclear beyond a general presumption that any development that is likely to lead to air quality impacts on the Ashdown Forest SAC in the form of additional traffic will need to be considered through a Habitats Regulations Assessment.

- 5.9 An updated HRA for the Main Modifications District Plan was produced in September 2017<sup>6</sup>. This considered the implications of the *Wealden* judgment following further transport modelling and air pollution modelling analysis commissioned by the District Council. This HRA screening report should be read in conjunction with the updated District Plan HRA.
- 5.10 The Mid Sussex Transport Study (Amey, 2017) uses a Reference Case (which represents forecast baseline traffic flows at 2031) to predict the additional traffic flow impacts of a future Development Case scenario which could occur under the District Plan. The transport modelling exercise, which MSDC has undertaken, allows for provision in total of 17,797 homes. This comprises: completions (since 2008 as the base date of the model) of 5,234 dwellings (of which 2,426 dwellings have been completed since the Plan's start date of 2014); commitments (with planning permission) of 5,086 dwellings; existing allocations in the Mid Sussex District Plan and Neighbourhood Plans of 5,824 dwellings; the delivery of growth in line with the settlement hierarchy set out in District Plan Policy DP5 (based on expected housing sites beyond the 5 year supply) of 1,158 dwellings; and a proportionate windfall allowance of 495 dwellings.
- 5.11 The transport modelling shows that the Development Case results in an overall modest reduction in traffic on the assessed routes. However, the reduction of traffic flows on the A22 and A26 is matched by an increase in traffic flows on the A275. This has been assessed further through air pollution modelling which focused on the amount of nitrogen deposition from the additional traffic-source pollution contributed by developments proposed in the District Plan, in combination with growth assumptions for surrounding local authority areas. The analysis indicates that the predicted increase in nitrogen deposition is not considered to be ecologically significant. The overall effect of the District Plan's process contribution to pollution deposition within qualifying SAC habitats can be considered neutral.

### **Screening Assessment**

- 5.12 The following table illustrates the findings of the screening assessment for each of the policies within the Copthorne Neighbourhood Plan. This assesses whether there is a likely significant effect from these policies on the Ashdown Forest SPA and SAC.
- 5.13 For it to be concluded that a policy would have no likely significant effect on a European site, one of the following reasons usually applies (this is taken from the guidance for Scottish Natural Heritage, p19-20):
- a) Intended to protect the natural environment, including biodiversity, or to conserve or enhance the natural, built or historic environment, where enhancement measures will not be likely to have any negative effect on a European site;
  - b) Which will not themselves lead to development or other change, for example, because they relate to design or other qualitative criteria for development or other kinds of change;

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<sup>6</sup> Habitats Regulations Assessment for the Mid Sussex District Plan: Appropriate Assessment Report for the Main Modifications District Plan (September 2017): [www.midsussex.gov.uk/districtplan](http://www.midsussex.gov.uk/districtplan).

- c) Which make provision for change but which could have no conceivable effect on a European site, because there is no link or pathway between them and the qualifying interests, or any effect would be a positive effect, or would not otherwise undermine the conservation objectives for the site;
- d) Which make provision for change but which could have no significant effect on a European site (but is a minor residual effect), because any potential effects would be insignificant, being so restricted or remote from the site that they would not undermine the conservation objectives for the site;
- e) For which effects on any particular European site cannot be identified, because the policy is too general, for example, it is not possible to identify where, when or how the policy may be implemented, or where effects may occur, or which sites, if any, may be affected.

<b>Copthorne Neighbourhood Plan Policy</b>	<b>Policy</b>	<b>Comment</b>	<b>Likely Significant Effect on the Ashdown Forest SPA and SAC</b>
CNP1	General Development Requirements	This policy seeks to set out general requirements for new development.	No likely significant effect – reason b).
CNP2	Infill Development	This policy seeks to set out criteria for infill development.	No likely significant effect – reason b).
CNP3	Homes for Older People	This policy seeks to retain existing bungalows and to ensure provision of bungalows in new developments.	No likely significant effect – reason b).
CNP4	Important Community Facilities	This policy seeks to retain existing community facilities.	No likely significant effect – reason b).
CNP5	Conversion of Public Houses	This policy seeks to retain existing public houses.	No likely significant effect – reason b).
CNP6	Assets of Community Value	This policy supports development proposals at assets of community value that are of benefit to the local community.	No likely significant effect – reason b).
CNP7	Local Green Space	This policy designates 11 areas as local green space.	No likely significant effect – reason a).
CNP8	Parish Heritage Assets	This policy seeks to protect 8 assets identified as Parish Heritage Assets.	No likely significant effect – reason a).



<b>Copthorne Neighbourhood Plan Policy</b>	<b>Policy</b>	<b>Comment</b>	<b>Likely Significant Effect on the Ashdown Forest SPA and SAC</b>
CNP9	CA1: High Weald AONB	This policy seeks to ensure development proposals protect and enhance this character area.	No likely significant effect – reason a).
CNP10	CA2: Agricultural Belt	This policy seeks to ensure development proposals protect and enhance this character area.	No likely significant effect – reason a).
CNP11	CA3: Copthorne Common and Woodland	This policy seeks to ensure development proposals protect and enhance this character area.	No likely significant effect – reason a).
CNP12	CA4: Historic Core	This policy seeks to ensure development proposals protect and enhance this character area.	No likely significant effect – reason a).
CNP13	CA5: Post War Copthorne	This policy seeks to ensure development proposals protect and enhance this character area.	No likely significant effect – reason a).
CNP14	Our Economy	This policy seeks to retain shops and services, and supports the provision of improved telecommunication infrastructure.	No likely significant effect – reason b).
CNP15	Sustainable Transport	This policy supports sustainable transport measures including new footpaths and cycle lanes. This policy also seeks the provision of electric charging points for off-road parking spaces. The policy does not support the provision of airport-related car parking.	No likely significant effect – reason b).
CNP16	Car Parking	This policy seeks to retain off-road parking spaces and ensure new development provides sufficient parking.	No likely significant effect – reason b).

Cophorne Neighbourhood Plan Policy	Policy	Comment	Likely Significant Effect on the Ashdown Forest SPA and SAC
CNP17	New Parking Areas	This policy supports proposals that seek to address on-street parking issues.	No likely significant effect – reason b).

5.14 No policies in the Cophorne Neighbourhood Plan were found to have a likely significant effect alone on the Ashdown Forest SPA and SAC. Cophorne Parish is 7.5km and Cophorne village is 9.5km from the boundary of the Ashdown Forest SPA and therefore is outside the 7km zone of influence so there is unlikely to be an in-plan in combination effect (that is, there is unlikely to be an in combination effect from the policies in the Neighbourhood Plan). Any wider in combination effect with other plans will be considered in the section below.

#### **In Combination Effects**

5.15 Other neighbourhood plans and windfall sites within the 7km zone in Mid Sussex will be required to provide mitigation for development where there is a net increase in dwellings and any in combination effect will be taken into account through the overall mitigation strategy. Policies that propose residential development in neighbourhood plans in Mid Sussex outside the 7km zone of influence are considered to have an insignificant effect on the Ashdown Forest SAC and SPA (as assessed through the District Plan HRA) although this will be explored in further detail in the HRAs of those neighbourhood plans.

5.16 This also applies to plans being produced by local authorities that have land within the 7km zone, such as Wealden District Council, Lewes District Council and Tunbridge Wells Borough Council. It is understood that with regards to recreational disturbance, Wealden District Council and Lewes District Council will be making provision for SANG and contributing to the wider Joint SAMM Strategy. Any relevant development in Tunbridge Wells Borough will be making a contribution towards SAMM measures.

5.17 All affected local authorities are involved in the Joint SAMM Strategy and their work on mitigation described above demonstrates their commitment to protecting the Ashdown Forest SPA and SAC under the Habitats Regulations.

5.18 Ongoing monitoring of birds, visitors and the SAMM projects at Ashdown Forest as well as monitoring visitors at the SANG will ensure that mitigation remains effective. Adjustments can be made to the mitigation strategy and tariff if deemed necessary. Monitoring and any adjustments will be examined through the SANG and SAMM strategies.

## 6.0 Conclusion of the Screening Assessment

- 6.1 The screening assessment table above shows that there would be no likely significant effects on the Ashdown Forest SPA and SAC from the policies included within the Copthorne Neighbourhood Plan. A full HRA (that is, the appropriate assessment stage that ascertains the effect on integrity of the European site) of the Copthorne Neighbourhood Plan is not required.
- 6.2 As a precautionary measure, any residential development proposed within Copthorne Parish will be subject to the recommendations of the HRA and if relevant, the current approach to Ashdown Forest being implemented at that time. Applicants for planning permission are advised to contact the District Council for further advice prior to submitting a planning application.

### Development Management

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Approved by:



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**Appendix 1: The Copthorne Neighbourhood Plan Area in relation to the Ashdown Forest Special Protection Area and Special Area of Conservation**

