

Interim Appropriate Assessment Statement



Salisbury District Council

Local Development Framework
Core Strategy Issues and Options

Interim Appropriate Assessment Statement

July 2007

Legislative Framework

Directive 92/43/EEC (the Habitats Directive) on the Conservation of Natural Habitats and of Wild Fauna and Flora requires an Appropriate Assessment (AA) to be undertaken to assess the impacts of a land-use plan against the conservation objectives of a European Site and to ascertain whether it would adversely affect the integrity of that site. Where significant negative effects are identified, alternative options should be examined to avoid any potential damaging effects. AA applies to Regional Spatial Strategies (RSSs), transitional plans, Development Plan Documents (DPDs) and Supplementary Planning Documents (SPDs).

Purpose of this Interim Statement

While there is no statutory requirement for an Appropriate Assessment (AA) at this Core Strategy Issues and Options stage, we have created an assessment framework that we propose to use to assess our preferred options against. We have done this at this early juncture for two fold reasons:

- (a) To clearly set out at an early stage the framework we intend to subject all options and Local Development Framework (LDF) documents to at an appropriate stage of the process, in order to allow all stakeholders to have an early input into our methodology and suggest improvements to us.
- (b) To unequivocally indicate, at the earliest stage, our total commitment to the proper implementation of the Appropriate Assessment, both alone and in combination, of our emerging policies, plans and strategies in order to safeguard the integrity of our Special Area of Conservation (SAC).

Soundness of our Methodology

We propose to adapt and re-use the methodology we implemented when determining the Stonehenge Visitor Centre planning application. This methodology has the benefit of being scrutinised at public inquiry and being considered sound by both the Inspector and then Secretary of State for Communities and Local Government, Ruth Kelly MP. This methodology incorporated the need to carry out an appropriate assessment of proposals both alone and in combination with others.

The Appropriate Assessment Framework

The proposed framework that will be used is set out in Appendix 1 of this paper. We welcome comments on this framework from all stakeholders and whether it is fit for purpose.

Application of AA on the LDF

The AA process prescribed in Article 6(3) and (4) of the Habitats Directive comprises three main tasks:

1. likely significant effects
2. ascertaining the effect on site integrity
3. mitigation and alternative solutions

These tasks are collectively described as “appropriate assessment”.

We endorse the Government's definition as

' "Appropriate assessment" is simply taken to mean an assessment which must be appropriate to its purpose under the Habitats Directive and Regulations, neither of which specify how the stages of AA should be undertaken. The AA must be recorded and carried out with a view to informing the decisions in the plan.'

Furthermore the comprehensiveness of the assessment work undertaken to test the Salisbury LDF will be proportionate to the geographical scope of the option and the nature and extent of any impacts on the SAC that can be identified. The AA will not be done in any more detail, or using more resources,

than is useful for its purpose. As throughout the process the level of detail required to test emerging options will be agreed with Natural England.

Relationship with Sustainability Assessment.

Appropriate Assessment and Sustainability Assessment are two separate processes each with their own legal requirements:

- SA aims to ensure that the land-use plan contributes to sustainable development by integrating social, environmental and economic considerations into plan preparation and incorporating the requirements of the European Directive 2001/42/EC "on the assessment of the effects of certain plans and programmes on the environment" (the Strategic Environmental Assessment Directive or SEA Directive).
- AA aims to ensure that the plan will not have an adverse effect on the integrity of European sites as described above.

Although they represent two discreet processes we propose to carry them out in tandem to ensure we can maximise the relevant evidence gathered in the SA and to use it to inform the AA and vice versa. However the SA and AA outputs will be clearly distinguishable and reported on separately, hence the separate production of this Interim Appropriate Assessment Statement.

Precautionary Principle

We will agree a screening procedure with Natural England, to be applied on a case by case basis, to ascertain whether an option emerging from the LDF may alone, or in combination, have the potential to have a significant impact on the SAC and hence require a full Appropriate Assessment.

These screening criteria are yet to be agreed. From previous experience the likely adverse impacts will at least include the following impacts upon the protected watercourses:

- Runoff, spillage or leakage directly or via groundwater polluting the river during construction.
- Run off during operational use of the development
- Increased demand upon water resources arising from increased populations
- Increased sewerage disposal impact upon
 - a) Capacity of existing treatment works
 - b) Quality/quantity of discharge into the Avon
 - c) Need for additional works to treatment works
- Direct loss of habitat
- Indirect pressures on the river system if floodplain dynamics are altered.

Taking note of the ECJ judgment in the Waddenzee case C-127/02, wherever there is potential for an impact, rather than try and justify why an AA has not been deemed necessary, Salisbury District Council will apply the process, using the best information open to it, to allow a proper evaluation of an option to be made.

Evidence and analysis

In gathering evidence for our LDF Core Strategy Issues and Options (and all subsequent stages) and scoping our SA we have also taken the opportunity to collect information which will inform the AA, process. We have paid particular attention to:

- European sites within and outside the plan area potentially affected;
- The characteristics of these European sites;
- Their conservation objectives; and
- other relevant plans or projects

We have instigated early dialogue with Natural England on gathering our evidence and on the proposed AA methodology. The following has emerged from this early dialogue and past working relationship.

Related to the previous Appropriate Assessment work it is apparent that the sites conservation objectives are based on the River Avon and its major tributaries, The Bourne, Till, Wylye, Nadder and Dockens Water. The River Avon SAC was designated because it contains a high diversity of habitat types and species which are of European importance given that they are either rare or threatened.

The species of European importance are:

- Atlantic Salmon (*salmo salar*)
- Bullhead (*Cottus gobio*) for which the River Avon catchment is considered to be one of the best areas in the United Kingdom
- Brook Lamprey (*Lampetra planeri*) a small, jawless, eel like freshwater fish, for which the River Avon catchment is considered to be one of the best areas in the United Kingdom
- Sea Lamprey (*Petromyzon marinus*) The largest lamprey found in the UK. Inhabits coastal waters and spawns in rivers, for which the River Avon catchment is considered to be one of the best areas in the United Kingdom (although not the upper reaches of the River Avon)
- Desmoulin's whorl snail (*vertigo moulinsiana*) a small snail usually found in long established environments bordering lowland rivers and lakes. It occurs in scattered sites between the Norfolk Broads and Dorset. Within Europe, only England and Ireland have reasonable populations. The River Avon catchment is considered to be one of the best areas in the United Kingdom
- Flowing water vegetation (*Ranunculion fluitantis* & *Callitriche-Batrachion*). Watercourses dominated by water-crowfoot species reflecting relatively unpolluted water. The River Avon catchment is considered to be one of the best areas in the United Kingdom

Within the River Avon catchment key issues to impact upon the river's condition include:

- Land drainage
- Diffuse pollution from agriculture
- Development proposals (both construction phase and operation)
- Abstraction levels
- Foul drainage treatment and discharge.

Mitigation

Where an option has been found to have adverse effects on the integrity of the European site, we will assess, on liaison with Natural England whether the negative effects can be mitigated. The primary aim of the mitigation of an option should be to cancel out any adverse effects fully.

Where it is not possible to eradicate negative effects completely, there should be a sufficient reduction so that an adverse impact on the integrity of the European site can be nullified. This may include the modification of an option.

We will need to ensure that any mitigation measures are realistic and feasible. If they are not and after all practicable mitigation measures have been exhausted on an emerging option, if it is still shown to still have a potentially negative effect on the integrity of the European site, and in absence of any other alternative solution, as a rule the option will be dropped.

Publication of Findings

We will make our AA findings available to the community and will consult on as appropriate on the preferred options at the regulation 26 stage (pre-submission public participation) of the LDF the AA findings will be published at the same time as the SA Report and both will contain a non-technical summary.

If necessary after taking account of representations, we will revisit the AA and make necessary changes to ensure the process is sound, robust and meets our responsibility to ensure that the

submitted DPD has met the requirements of the Habitats Directive and amending Habitats Regulations.

Appendix 1 - Proposed Appropriate Assessment Framework.

Framework for an Appropriate Assessment under The Conservation (Natural Habitats & c) Regulations 1994

Proposal: Options emerging for the Local Development Framework

Location: District Wide

International Nature Conservation Site: River Avon System Site of Special Scientific Interest and River Avon Special Area of Conservation

Nature/Description of Option: Each emerging option to be added in due course

Purpose of this Document

To set an agreed framework with Natural England and other parties as to how the Appropriate Assessment both alone and in combination will be carried out for the the emerging options of the Local Development Framework. In each category below the relevant guidance is quoted to set the framework and then the work or proposed course of action to relate it to this specific DPD is highlighted within the yellow box.

Legislative Framework

Required by Regulation 48 of the *Habitats Regulations 1994* implementing Article 6(3) of the *Habitats Directive (92/43/EEC)*.
The Conservation (Natural Habitats, &C) (Amendment) (England and Wales) Regulations 2006
Guidance For Regional Spatial Strategies and Local Development Documents

Why is an appropriate assessment required for the Core Strategy?

Under Regulation 48(1), an appropriate assessment needs to be undertaken in respect of any plan or project which:

- a. either alone or in combination with other plans or projects would be likely to have a *significant effect* on a European Site, and
- b. is not directly connected with the management of the site for nature conservation.

Salisbury District Council (Competent Authority) Action

The River Avon Special Area of Conservation (SAC) is a major feature within Salisbury District and the Council is under an obligation to properly assess any proposal that may have significant impacts both alone and in combination on the ecology of the watercourse. We will take a safety first approach to appraising the emerging LDF options and if there is doubt whether they would have an impact or not, they will be assessed.

When does the appropriate assessment need to be Carried Out?

An appropriate assessment needs to be undertaken in respect of a plan or project described above before any "*competent authority*" decides to give any consent, permission or other authorisation for the plan or project. (Regs. 48(1) *et al*);

Salisbury District Council (Competent Authority) Action

Therefore the Appropriate and in-combination Assessment needs to be complete prior to the DPD being placed before the decisions are taken by the Councils Cabinet on the preferred options for the Local Development Documentdocuments.

Determining significant Impacts

We will take advice from Natural England as to whether any particular plan or project may be likely to have significant effect on any of these sites.

Salisbury District Council (Competent Authority) Action

As well as working in close liaison with Natural England, we have set up a Technical Consultative Group, comprising key stakeholders including Natural England, Environment Agency, Wessex Water and others to help us consider the implications of options emerging from our LDF process and to help advise us on proposals policies that may have significant effect on the River Avon SAC and that an Appropriate Assessment is required, alone and in combination with other plans, projects and policies.

Who is the Competent Authority that will undertake the appropriate assessment?

Salisbury District Council and /or English Heritage.

Salisbury District Council (Competent Authority) Action

Salisbury District Council will take the role in this case.

What is an Appropriate Assessment?

Directive 92/43/EEC (the Habitats Directive) on the Conservation of Natural Habitats and of Wild Fauna and Flora requires an Appropriate Assessment (AA) to be undertaken to assess the impacts of a land-use plan against the conservation objectives of a European Site and to ascertain whether it would adversely affect the integrity of that site. Where significant negative effects are identified, alternative options should be examined to avoid any potential damaging effects. AA applies to Regional Spatial Strategies (RSSs), transitional plans, Development Plan Documents (DPDs) and Supplementary Planning Documents (SPDs).

Scope and Content

The scope and content of an appropriate assessment will depend on the location, size and significance of the proposed plan or project. Natural England will advise on a case-by-case basis. According to the nature conservation interests of the site, Natural England will identify particular aspects that the appropriate assessment should address.

Salisbury District Council (Competent Authority) Action

Natural England will be consulted on all stages of the LDF process and asked to advise on which options require an Appropriate Assessment, both alone and in combination with other projects. This will use previously completed AA's, as a baseline, especially that for the Stonehenge Visitor Centre planning application, but will be updated with new information obtained by the Council. Based on previous AA's and in combination work carried out related to the River Avon SAC the key impacts to be assessed can be expected to be:

- Runoff, spillage or leakage directly or via groundwater polluting the river during construction.
- Run off during operational use of the development
- Increased demand upon water resources arising from increased populations
- Increased sewerage disposal impact upon
 - a) Capacity of existing treatment works
 - b) Quality/quantity of discharge into the Avon
 - c) Need for additional works to treatment works
- Direct loss of habitat
- Indirect pressures on the river system if floodplain dynamics are altered.

Relationship with Sustainability Appraisal and Strategic Environmental Assessment

An Sustainability Appraisal Scoping Report has been produced by Salisbury District Council and adopted by its Cabinet. This document sets out a detailed framework against which policies, plans and strategies are assessed to determine whether they meet the overarching aims of delivering a sustainable means of growth. This Sustainability Framework incorporates the need for a Strategic Environmental Assessment and it sets out some 23 Sustainability criteria against which any emerging policy, plan or option is evaluated against.

Together with this Appropriate Assessment and the Equalities and Diversity Screening Assessment the Sustainability Appraisal is one of a key suite of tools which will be used to ensure that the Council is meeting its important statutory obligations in delivering fair, sustainable and environmentally friendly growth for the people of South Wiltshire.

This suite of tools will be used throughout the process of producing a new set of policies. For example although there is no statutory requirement for the Core Strategy Issues and Options to be subject to such scrutiny, we have taken the decision to do so as acknowledgement of the importance of these issues and also to help refine the options we present to the communities. We will use the frameworks as a first filter and not consult on options which will clearly be counter to the aims of these frameworks. As the process progresses to Preferred and Final options full application of the frameworks will be made on each emerging option to assess whether they can meet our sustainability and nature conservation imperatives.

Methodology - How the Appropriate Assessment, alone and in combination will be carried out for the LDF Preferred Options

While a basic filtering will be used at the Issues and Options stages, the Preferred Options for the LDF will be subjected to a full Appropriate Assessment, which will comprise of the following key stages:

The competent authority:

1. *Must consult Natural England*
2. *May consult the general public*
3. *Should clearly identify and understand the site's conservation objectives having regard to the advice of Natural England*
4. *Should ensure we provide such information as may reasonably be required for the purposes of the assessment*
5. *Should identify the effects of the emerging plan, policy or strategy on the habitats and species of international importance and how those effects are likely to affect the site's conservation objectives*
6. *Should decide whether the plan or policy, as proposed, would adversely affect the integrity of the site in the light of the conservation objectives*
7. *Should consider the manner in which the plan or policy is proposed to be carried out, whether it could be modified, or whether conditions or restrictions could be imposed, so as to avoid adverse effects on the integrity of the site*
8. *Should conclude whether the proposal, as modified by mitigation measures and controls would adversely affect the integrity of the site*
9. *Should record the Assessment and notify Natural England of the Conclusions*

The Key Stages Related to the LDF Process

1. Consulting English Nature

Under Regulation 48(3) the competent authority must consult Natural England and must have regard to any representations made by Natural England.

Salisbury District Council (Competent Authority) Action

As well as working in close liaison with Natural England, we have set up a Technical Consultative Group, comprising key stakeholders including Natural England, Environment Agency, Wessex Water and others to help us consider the implications of options emerging from our LDF process and to help advise us on proposals policies that may have significant effect on the River Avon SAC and that an Appropriate Assessment is required, alone and in combination with other plans, projects and policies.

2. Consulting the General Public

Under Regulation 48(4) the competent authority may (if it considers it appropriate) take the opinion of the general public, on the implications of the proposal for the site's conservation objectives, using whatever steps they consider necessary. This may usefully include taking the opinion of others with relevant knowledge or expertise.

Salisbury District Council (Competent Authority) Action

The decision has been taken to consult the public on the implications of the emerging policies and strategies may have on the Special Area of Conservation.

3. The Site's Conservation Objectives

Natural England will be able to give a clear statement of the site's conservation objectives

Salisbury District Council (Competent Authority) Action

Related to the previous Appropriate Assessment work it is apparent that the sites conservation objectives are based on the River Avon and its major tributaries, The Bourne, Till, Wylde, Nadder and Dockens Water, made a SAC because it contains a high diversity of habitat types and species which are of European importance given that they are either rare or threatened.

The species of European importance are:

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Within the River Avon catchment key issues to impact upon the river's condition include:

- Land drainage
- Diffuse pollution from agriculture
- Development proposals (both construction phase and operation)
- Abstraction levels
- Foul drainage treatment and discharge.

4. Requiring Further Information

The competent authority, taking the advice of English Nature where necessary, should provide such information as the competent authority may reasonably require for the purposes of making the assessment (Reg.48(2)).

Salisbury District Council (Competent Authority) Action

On advice from Natural England, Salisbury will ensure that adequate evidence is available in order to allow a sound Appropriate Assessment to be made on the implications of its emerging policy framework.

Some evidence has been assembled from a detailed scan of information available at an international, national, regional and local level and has been collated into a series of LDF Topic Papers, which can be viewed at www.salisbury.gov.uk

Where a need for additional, fresh information is required this will be secured through new studies by or on behalf of the Council

5. Identifying Effects

Having regard to Natural England's advice, other consultation responses and, where relevant, taking account of the Sustainability Appraisal and SEA or any other information otherwise available, the Council as competent authority should identify what the effects of the policies, plans and strategies are likely to be. The effects considered should be those of the plan or project, either alone or in combination with other plans or projects, on the habitats and species of international importance and how those effects are likely to affect the site's conservation objectives. This will involve considering, for example, the nature, scale, geographic extent, timing, duration and magnitude of direct and indirect effects; considering the degree of certainty in the prediction of effects; considering all mitigating measures already contained in the proposal and the extent to which these measures are likely to avoid, reduce or ameliorate adverse effects on the international nature conservation interests. It is the residual effects, after mitigation, that are considered at this stage.

Salisbury District Council (Competent Authority) Action

The effects of the emerging issues and options for the LDF, either alone or on the SAC will be identified at the Preferred Option stage, as the information outlined in section 4 above is agreed with Natural England and other Stakeholders.

6. Integrity of the Site

Having regard to Natural England's advice, other consultation responses and any other information available, the competent authority should decide whether the plan or project, as proposed, would adversely affect the integrity of the site, in the light of its conservation objectives. That is, whether the plan or project would adversely affect the coherence of the site's ecological structure and function, across its whole area, or the habitats, complex of habitats and/or populations of species for which the site is or will be classified. An adverse effect on integrity is likely to be one which prevents the site from making the same contribution to favourable conservation status for the relevant feature as it did at the time of its designation.

The form of words used in Regulation 48(5) implies that a precautionary approach should be taken in considering effects on integrity, in line with the Government's principles for sustainable development (see *Sustainable Development: the UK strategy* page 33). Regulation 48(5) says that (subject to Regulation 49) projects may only proceed if the competent authority has ascertained that it will not adversely affect the integrity of the European site

Salisbury District Council (Competent Authority) Action

We will take the necessary steps to ascertain whether a proposal or policy will have an adverse effect on the integrity of the European site. Preferred Options will not be progressed until such time as it has been demonstrated that they pass this critical test.

7. Considering How To Avoid Adverse Effects

If a policy, plan or strategy could adversely affect the integrity of the site then, having regard to Natural England's advice, the competent authority should consider the manner in which it is proposed to be carried out and whether the plan or project could be modified, or whether conditions or restrictions could be imposed, so as to avoid the adverse effects. This may include, for example, changes to the siting, layout, timing or use of the proposal and the use of obligations or legal agreements. (Reg. 48(6)).

Compensatory measures that may be offered in the proposal at this stage, seeking to redress but not remove residual harm to the international interests (such as the provision of land for habitat creation purposes), should not be considered in the appropriate assessment, but may be considered later in the decision making process.

(See Reg. 53).

Salisbury District Council (Competent Authority) Action

Mitigating adverse impacts can only be considered on analysis of the detailed information required and agreed with Natural England under step 4.

8. Conclusion on Effects In The Light of Mitigation

The competent authority should reassess the conclusions in the light of any such potential modifications, conditions or restrictions that may be agreed or imposed.

9. Recording the Assessment

It would be advisable for this conclusion, and the reasons for it, to be recorded. Natural England should be notified of the conclusion of the appropriate assessment and the authority's decision as to the effects on the integrity of the site, before the authority undertakes the plan or project or issues any permission, consent or other authorisation.

The subsequent courses of action open to a competent authority are set out in Regulations 48(5) - (7), 49 and 54(3). The Regulations prohibit a competent authority from undertaking or giving consent to any plan or project unless the appropriate assessment concluded that it would not have an adverse effect on the integrity of the site, or specific criteria are met and the Secretary of State has been informed.

Salisbury District Council (Competent Authority) Action

To record the assessment the local authority will adopt the Good Practice Outline at paragraph 29 of the English Nature, Habitats Regulations Guidance Note (May 1997) and will append the assessment to relevant Committee reports, place a public inspection copy on deposit in the public reception area, council website, copied to Natural England and all parties who were consulted on the assessment.

Background Papers

The Conservation (Natural Habitats &c) Regulations 1994
Habitats Regulations Guidance Note 1 - English Nature 1997
Planning Policy Guidance Note 9
Committee Report to Planning & Regulatory Panel - John Hammond, Salisbury District Council 2002
Counsel's Opinion & Guidance Note - James Maurici 2003
Stonehenge Planning Application, Committee Report, October 2006
Stonehenge decision letter, Secretary of State, 28th March 2007 (ref App/T3915/A/05/1193511)
Counsel's opinion, Zoë Leventhal and David Blundell, Landmark Chambers, 10th July 2007
[Application of Appropriate Assessment under Article 6\(3\) and \(4\) of the Habitats Directive 92/43/EEC to Development Plans \(PDF 47 Kb\)](#)
Planning for the Protection of European Sites: Appropriate Assessment - Guidance For Regional Spatial Strategies and Local Development Documents

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