



Interim Bulletin 1:

HRA in Casework

November 2021

## Introduction

1. This bulletin highlights issues relating to Habitats Regulations Assessment (HRA) on a number of casework types, other than appeals against a refusal of planning permission. Although HRA issues have become more prominent in light of recent developments in relation to Riverine SACs (both failing and otherwise - see relevant ITM chapter), they apply wherever there is a potential for significant effects on a National Network Site (NNS) (formerly European Protected Sites). Inspectors should familiarise themselves with this advice and with other relevant parts of the ITM relating to HRA.
2. The questionnaires for relevant casework types have been updated to seek information from LPAs that will enable Inspectors to judge whether the proposal before them may affect a NNS and whether they need to deal with HRA in a particular case.
3. The Planning and Environment Team (PET) will continue to triage all incoming cases in relation to potential effects on Riverine SACs and flag up any potential HRA issues for the Inspector's attention. However, it is ultimately the Inspector's responsibility on all cases where they are the Competent Authority to satisfy themselves that they have discharged their duty correctly and the PET does not triage in relation to other HRA issues. Where there is any uncertainty, advice can be sought from the PET in the first instance ([PEDW.PlanningAndEnvironment@gov.wales](mailto:PEDW.PlanningAndEnvironment@gov.wales)).

## Cases where consent has previously been granted

4. This includes appeals involving conditions, approval of reserved matters and any other case where a consent has been previously granted. In such cases, it will be necessary to establish whether the original proposal had the potential to have a significant effect on a NNS and if so, whether HRA was undertaken at the time the consent was granted. If HRA was undertaken when the original consent was granted it will then be necessary for the Inspector to consider whether there has been a change in circumstances that would necessitate undertaking HRA in relation to the subsequent approval before them.
5. This principle extends to appeals under Section 73 of the Town and Country Planning Act 1990 as although they can result in a new planning permission, it is possible that a previous HRA may be relied upon if a grant subject to the altered conditions sought by the appellant would not change the potential effects of the development in relation to the NNS that were considered earlier.
6. If the Inspector is satisfied that HRA was undertaken properly and that circumstances have not changed / the details proposed in the subsequent approval before the Inspector would not alter the outcome of the original HRA, they do not need to revisit it and it will be a matter of judgement as to whether this should be covered in their decision.

7. If HRA was not properly undertaken or if circumstances have changed since consent was granted to the effect that there is a **mere probability**<sup>1</sup> that the development could have a significant effect on a NNS, HRA should be undertaken by the Inspector as the Competent Authority on the case before them.
8. If the Inspector has confirmed that they must undertake HRA, but the information available is insufficient for them to do so, the Inspector will need to make a judgement whether to allow further time for additional submissions, or whether to dismiss the appeal for lack of information.

## Listed Building Consent

9. Listed Building Consent (LBC) is a form of consent for a project and therefore falls within the scope of HRA, if the works proposed are likely to have a significant effect on a NNS. In that situation, HRA must be undertaken for the LBC itself, unless there is an accompanying planning appeal for the same development that will require the Inspector to undertake HRA, or an existing consent where HRA was carried out appropriately at the application stage, and the Inspector is satisfied that there has been no change in circumstances to necessitate a new HRA.

## HRA Prior Approval

10. Any permitted development (PD) which would be likely to have a significant effect on a NNS is subject to a form of HRA prior approval. This will be relevant in cases where lawfulness based on PD rights, or PD-based fallback positions are argued.
11. There is a mechanism for applicants to apply to NRW for its view on whether the permitted development would be likely to have a significant effect on a NNS. If NRW confirms that it would not, that is conclusive and the applicant does not need any further approval (unless required by other conditions imposed by the GPDO).
12. If NRW confirms that a significant effect is likely, or if the applicant has come to that view themselves, they must apply to the LPA for its written approval and cannot begin development without it. On receipt of an application, the LPA is required to consult NRW, to take account of its views and to carry out an appropriate assessment where necessary.
13. If Inspectors are dealing with cases where it is claimed that a particular development was or would be permitted by the GPDO and the information available suggests that it could affect a NNS, it will be necessary to establish whether the applicant has confirmation from NRW that a significant effect is not likely or has the written approval of the LPA. If they cannot provide either it would undermine any reliance on the GPDO, as the ability to implement the development would be dependent on obtaining one or the other, which would not be guaranteed.

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<sup>1</sup> [The Waddenzee case \(C/127/02\) \[41\]](#)

14. The need for HRA prior approval does not cross into appeals against the refusal to grant other forms of prior approval, as in those instances the matters before the Inspector are limited to the issues that require approval, rather than the question of whether the development as a whole would be lawful. Obtaining prior approval of, for example, siting and design, would not remove the need to for applicant to also obtain HRA prior approval where it is required.