

Habitats Regulations Assessment Background Note

Date: October 2021

1. INTRODUCTION

- 1.1 AECOM was appointed by the Council to assist in undertaking an appropriate assessment of the policies and site allocations in the second draft Regulation 19 WLP (September 2021), the findings of which are presented within the Updated Habitat Regulations Assessment (Aecom, August 2021) (“the HRA”).
- 1.2 In these representations we provide a critique of the HRA focusing on how ‘Policy MD3 – Fiddlers Ferry’ has been assessed in the HRA. This note draws out and provides further details of the main point that are raised in the representations, which results in a process which does not pass the legal requirements because:
- The conclusions of the appropriate assessment do not allow the Council to ascertain that the Fiddlers Ferry allocation would not adversely affect the integrity of the Mersey Estuary SPA and Ramsar as required by Regulation 61 of The Conservation of Habitats and Species Regulations 2010; and,
 - ‘Policy MD3 – Fiddlers Ferry’ would only be legally compliant if the Council have first considered alternative solutions, which they have not done, as required by Regulation 62 of The Conservation of Habitats and Species Regulations 2010.

2. CRITIQUE OF HRA

2.1 Table 2 of the HRA provided screening analysis of 'Policy MD3 – Fiddlers Ferry' identifying likely significant effects on:

- Manchester Mosses SAC – Since the Manchester Mosses SAC is located within Warrington there is the possibility that increased housing development on the Fiddlers Ferry allocation may lead to likely significant effects to the SAC. This policy is screened in for the SAC due to issues associated with air quality and increased recreation, but it is fair to say that this designation is some distance from the site and located to the northeast of Warrington.
- Rixton Clay Pits SAC – Since the Rixton Clay Pits SAC is located within Warrington there is the possibility that increased housing development on the Fiddlers Ferry allocation may lead to likely significant effects to the SAC. The policy is screened in for Rixton Clay Pits SAC due to issues associated with air quality and increased recreation pressure. Again, this designation is some distance from the Fiddlers Ferry site and is located to the far east of Warrington.
- Mersey Estuary SPA and Ramsar – The Mersey Estuary SPA/ Ramsar is located 3.6km to the west of the Fiddlers Ferry development area. This distance is sufficiently close to the proposed development site that likely significant effects could arise due to increased recreational pressure and air quality. Moreover, development locations in the western parts of Warrington could constitute functionally-linked habitat for birds for which the SPA is designated. This site is therefore screened in for further analysis, which we corroborate on the basis of the proximity of this site to the designation and the fact that the proposed developed parts of the site sit directly within the river Estuary and general flood plain area.

2.2 The HRA finds that 'Policy MD3 – Fiddlers Ferry' poses the highest potential risk to the loss of functionally linked habitat and is the most likely to coincide with significant wintering/passage populations of the Mersey Estuary SPA and Ramsar SPA, lying close to the River Mersey south-west of Warrington (paragraph 4.3)¹. The Fiddlers Ferry site has a number of lagoons within the allocation site that would be adjacent to the proposed areas of residential development (paragraph 4.4).

2.3 The HRA goes on to state at paragraph 4.6:

"The Fiddlers Ferry allocation lies directly north of the Mersey Estuary SPA/Ramsar, comprising what appear to be three relatively large agricultural fields that are to be released from the Green Belt. The close proximity to the River Mersey is likely to be one of the main reasons why all qualifying species (i.e. shelduck, teal, pintail, golden plover, dunlin, black-tailed godwit and redshank) of the SPA / Ramsar have been recorded in the tetrad encompassing this allocation.

¹ Along with the Warrington Waterfront allocation.

However, most of these species are tightly associated with aquatic feeding habitats and are unlikely to rely on agricultural land, unless freshwater habitats are found on site. However, golden plover, a species that moves from its upland breeding grounds to over-winter in low-lying countryside, is strongly dependent on agricultural foraging grounds. Black-tailed godwit may also supplement their diet with earthworms and other invertebrates found in non-estuarine habitats. A Preliminary Ecological Appraisal undertaken by Arcadis in January 2021 in support of the proposed demolition of the Fiddlers Ferry Power Station³⁵, confirmed the presence of various habitats on site, including unimproved neutral grassland, swamp, standing water, saltmarsh and arable fields. The report also specifies that shelduck, teal and redshank are supported within the lagoons of the site. It concludes that the site has potential functional linkage to the Mersey Estuary SPA / Ramsar. Given the current evidence base, it is concluded that further wintering bird data is required as part of the policy requirement for the allocation of this site in the Warrington Local Plan.” [our emphasis]

- 2.4 Thus, further wintering bird data is required to support ‘Policy MD3 – Fiddlers Ferry’. Indeed ‘Policy MD3 – Fiddlers Ferry’ itself states:

“In accordance with Policy DC4 development within the allocation site will be required to evidence that it will not have any adverse impacts on the integrity of the Mersey Estuary Special Protection Area. If habitats within the allocation site or on adjacent land are suitable to support significant populations of qualifying species of wintering birds, avoidance measures and mitigation will be required and any planning application may need to be assessed through project specific Habitats Regulations Assessment.”

- 2.5 The HRA goes on to state at paragraph 4.7:

“It is noted that Policies MD1 (Warrington Waterfront) and MD3 (Fiddlers Ferry) both contain specific policy wording regarding the protection of the Mersey Estuary SPA / Ramsar and the ecological settings surrounding the site allocations. For example, Policy MD1 states that the planning application will require ‘evidence that the development will not have adverse impacts on the integrity of the Mersey Estuary Special Protection Area; and have regard to sites identified in policy DC4 (Ecological Network) which should be protected...’ The policy goes on to stipulate that ‘25. Site surveys will be required as specified by Policy DC4 to assess habitats and their suitability to support significant wildlife populations. If habitats within the site or on adjacent land are suitable to support significant populations of wildlife, avoidance measures and mitigation will be required and any planning application may need to be assessed through a project specific Habitats Regulations Assessment.’ Similar protective policy wording is included in the text for Policy MD3. It is considered that this policy wording is sufficiently protective to allow a conclusion of ‘no adverse effect’ at the plan level, because it ensures that further work (e.g. habitat assessments and bird surveys) will be required to support relevant planning application(s).”

APPENDIX 5 – WGS Consortia Reps to Warrington Local Plan

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- 2.6 As such, the HRA delegates the acceptability of 'Policy MD3 – Fiddlers Ferry' to the project specific HRA(s) and bird surveys required through 'Policy MD3 – Fiddlers Ferry' itself.
- 2.7 Without the project specific HRA(s) and bird surveys it cannot be concluded that 'Policy MD3 – Fiddlers Ferry' would have no adverse effect at the Plan level. Indeed, no evidence is provided in this regard in the HRA or other supporting evidence base documents. Furthermore, the approach adopted in the HRA is at odds with Planning Practice Guidance which says that an appropriate assessment must contain complete, precise and definitive findings and conclusions to ensure that there is no reasonable scientific doubt as to the effects of the proposed plan or project (Paragraph: 003 Reference ID: 65-003-20190722).
- 2.8 This is a legal compliance point. The HRA is not informed by sufficient evidence to draw clear conclusions.
- 2.9 This is a soundness point. 'Policy MD3 – Fiddlers Ferry' is not justified.