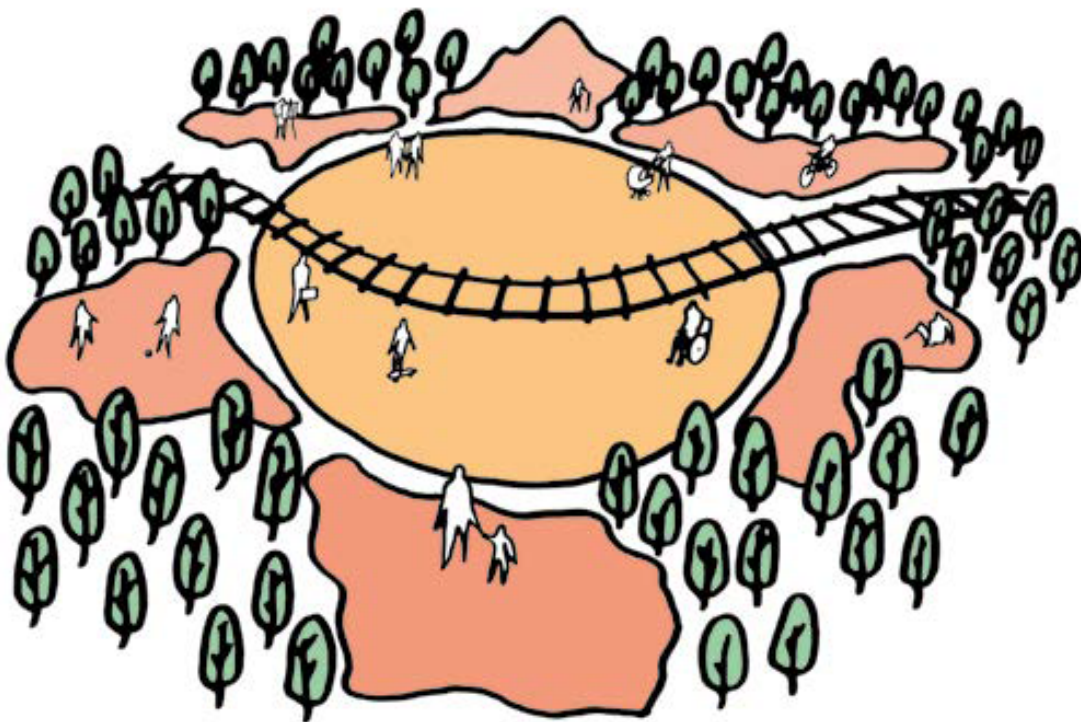


New Settlement (Maltkiln) Development Plan Document (DPD)



Habitats Regulations Assessment

2024

Assessment of Proposed Modifications

Assessment of Proposed Modifications 1

- 1.1** The Maltkiln New Settlement Habitats Regulations Assessment, Test of Likely Significant Effects, was prepared and published in April 2022 by AECOM on behalf of Harrogate Borough Council.
- 1.2** On the 1 April 2023 North Yorkshire Council was formed which assumed responsibility for administering the area previously administered by North Yorkshire County Council and the district councils of Harrogate, Craven, Hambleton, Richmondshire, Ryedale, Scarborough and Selby. The Regulation 19 consultation was held prior to the formation of North Yorkshire Council.
- 1.3** The Modifications as set out in the Maltkiln (New Settlement) DPD Proposed Modifications Schedule following Regulation 19 consultation have been assessed against the Habitats Regulation Assessment April 2022. None of the proposed modifications have led to changes to the Habitat Regulations Assessment (HRA).
- 1.4** The HRA April 2022 conclusion that there is a high degree of confidence there will not be a likely significant effect from the proposal on any European sites, either alone or in combination with other projects, still stands.
- 1.5** For completeness the HRA April 2022 report follows.

Malkiln New Settlement DPD

Habitats Regulations Assessment
Test of Likely Significant Effects

Harrogate Borough Council

April 2022

Quality information

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1. Introduction

- 1.1 In October 2020 Harrogate Borough Council produced a Habitats Regulations Assessment Screening Report documenting a Test of Likely Significant Effects regarding the potential for Maltkiln New Settlement to impact any part of the National Site Network, a network of internationally important wildlife sites in England. The report concluded that no likely significant effects would arise on any such sites from Maltkiln New Settlement, either alone or in combination with other plans and projects. In a consultation response received 18th January 2021 Natural England concurred with the assessment. Since that initial Screening Report was produced the Development Plan Document has been further developed and draft policies have been produced. The Council has asked AECOM to review the DPD and produce an updated Habitats Regulations Assessment. That is the purpose of this report.
- 1.2 The National Site Network of Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) is protected via the Conservation of Habitats and Species 2017 (as amended, most recently in 2019 to reflect Brexit). These regulations also set out the process for assessing potential adverse effects on such sites, known as Habitats Regulations Assessment (HRA). Paragraph 181 of the National Planning Policy Framework¹ clarifies that, in England, the HRA process is also applied to another category of internationally important wildlife site called Ramsar sites. The short-hand phrase European sites is often used to refer to all three designations for convenience.
- 1.3 Figure 1 below sets out the legislative basis for Habitats Regulations Assessment.

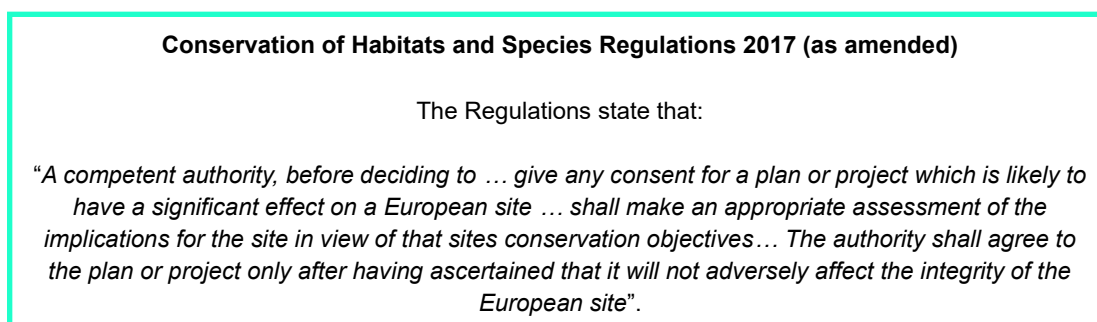


Figure 1: The legislative basis for Habitats Regulations Assessment

- 1.4 The first step in the process required by the regulations is to determine whether the project is likely to have a significant effect on any SAC, SPA or Ramsar site. That is the purpose of this document. If a likely significant effect will arise then an appropriate assessment is required.

¹ <https://www.gov.uk/guidance/national-planning-policy-framework>

2. Methodology

- 2.1 The HRA process applies the ‘Precautionary Principle’² to European sites. Plans and projects can only be permitted having ascertained that there will be no adverse effect on the integrity of the European site(s) in question. Plans and projects with predicted adverse impacts on European sites may still be permitted if there are no alternatives to them and there are Imperative Reasons of Overriding Public Interest (IROPI) as to why they should go ahead. In such cases, compensation would be necessary to ensure the overall integrity of the site network. To ascertain whether or not site integrity will be affected, an Appropriate Assessment should be undertaken of the plan or project in question:
- 2.2 Over time the phrase ‘Habitats Regulations Assessment’ (HRA) has come into wide currency to describe the overall process set out in the Regulations from screening through to IROPI. This has arisen in order to distinguish the process from the individual stage described in the law as an ‘Appropriate Assessment’.
- 2.3 In spring 2018 the ‘Sweetman’ European Court of Justice ruling³ clarified that ‘mitigation’ (i.e. measures that are specifically introduced to avoid or reduce a harmful effect on a European site that would otherwise arise) should **not** be taken into account when forming a view on likely significant effects. Mitigation should instead only be considered at the Appropriate Assessment stage. This HRA has been cognisant of that ruling.
- 2.4 The HRA has been carried out with reference to the general guidance on HRA published by government in February 2021⁴: AECOM has also been mindful of the implications of European case law in 2018, notably the Holohan ruling and the People over Wind ruling, both discussed below.

Scope of the Project

- 2.5 There is no guidance that definitively dictates the physical scope of an HRA in all circumstances, since the potential distance at which an impact can arise depends on the proposal, the sensitivity of European sites and the presence of a linking impact pathway for harm (e.g. noise, direct habitat loss etc.).
- 2.6 For the purposes of this assessment a 10km zone around the proposal site is considered suitably precautionary based on experience of similar projects i.e. those which involve the delivery of a large number of dwellings on a single site. For example, most core recreational catchments (except for some coastal sites) are under 10km in size and there are few wintering waterfowl and waders that make extensive use of functionally linked habitats located more than 10km from their core areas.
- 2.7 In some cases, development impacts can extend beyond 10km, particularly where hydrological pathways are involved, so 10km has not been used as an absolute cut off distance if the source-pathway-receptor concept suggests that a European site located further afield could be significantly affected.

HRA Task 1 – Test of Likely Significant Effects (LSEs)

- 2.8 The first stage of any Habitats Regulations Assessment is a screening for Likely Significant Effects (LSEs) - essentially a high-level assessment to decide whether the full subsequent stage known as Appropriate Assessment is required. The essential question is:
- “Is the project, either alone or in combination with other relevant projects and plans, likely to result in a significant effect upon European sites?”*
- 2.9 The objective is to filter out those plans and projects that, without any detailed appraisal, are unlikely to result in impacts upon European sites, usually because there is no mechanism for an adverse interaction with European sites. This stage is the purpose of this report.

² The Precautionary Principle, which is referenced in Article 191 of the Treaty on the Functioning of the European Union, has been defined by the United Nations Educational, Scientific and Cultural Organisation (UNESCO, 2005) as: “When human activities may lead to morally unacceptable harm [to the environment] that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that harm. The judgement of plausibility should be grounded in scientific analysis”.

³ People Over Wind and Sweetman v Coillte Teoranta (C-323/17)

⁴ <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site>

- 2.10 A 2018 decision by the European Court of Justice⁵ concluded that measures intended to avoid or reduce the harmful effects of a proposed plan or project on a European site may no longer be considered by competent authorities at the LSEs stage of HRA. That ruling has been taken into account in producing this HRA.
- 2.11 Also, in 2018 the Holohan ruling⁶ was handed down by the European Court of Justice. Among other provisions paragraph 39 of the ruling states that *'As regards other habitat types or species, which are present on the site, but for which that site has not been listed, and with respect to habitat types and species located outside that site, ... typical habitats or species must be included in the appropriate assessment, if they are necessary to the conservation of the habitat types and species listed for the protected area'* [emphasis added]. Due account to this decision has been given in this HRA, particularly regarding the potential for mobile species for which an SAC or SPA is designated to be dependent on habitat outside the SAC or SPA.

Other plans and projects

- 2.12 It is a requirement of the Regulations for any Habitats Regulations Assessment to consider the potential for likely significant effects not only from the plan or project alone, but also (if there will be no significant effects alone) when considered 'in combination' with other plans and projects. For example, a new residential development situated within the core recreational catchment of a particular SAC may be too small to result in significant effects by itself, but when considered in combination with other planned residential developments to be delivered within the same core catchment over a similar timescale a likely significant effect could arise.

⁵ People Over Wind and Sweetman v Coillte Teoranta (C-323/17)

⁶ Case C-461/17

3. Test of Likely Significant Effects

- 3.1 Malkiln New Settlement is situated within arable and pasture farmland, with the River Nidd to the south running from the south-west to the north-east. The surrounding countryside is populated by villages of varying sizes, including Whixley to the north, Kirk Hammerton and Green Hammerton to the east and Cattal to the south. According to Policy 1 (Development Framework) of the Malkiln New Settlement DPD, the development of Malkiln must provide, as a minimum, at least 3,000 dwellings, 5 hectares of employment land, on site education, health, retail, community and other services and facilities and a local centre, as well as appropriate infrastructure, flood risk mitigation and biodiversity net gain.
- 3.2 The following European sites or Ramsar sites lie within 10km of the proposed Malkiln New Settlement:
- Kirk Deighton SAC, designated for great crested newt and located c. 5.7km to the south-west
- 3.3 The next nearest European site is Strensall Common SAC located 15.3km to the east. North Pennine Moors SAC/SPA is situated 26.8km to the west. Both these latter two SAC/SPAs are too far from Malkiln New Settlement for any realistic impact pathways to arise.
- 3.4 Kirk Deighton SAC would be very susceptible to development within 500m of the SAC boundary as this is the typical roaming distance from their breeding ponds for the great crested newts for which the SAC is designated. However, the SAC is too far from Malkiln New Settlement for this to be an issue.
- 3.5 The terrestrial habitats within the SAC boundary would be sensitive to atmospheric nitrogen deposition but this will primarily affect the botanical species composition of the sward. Great crested newts do not have highly specific terrestrial habitat requirements provided broad habitat structure is suitable (mainly, that the vegetation is not too short to provide too little cover). Relatively subtle changes in plant species composition and frequency will not affect the ability of the SAC to support great crested newts. Moreover, the SAC does not lie within 200m of any road likely to be a journey to work route from residents of Malkiln New Settlement meaning that it will not be exposed to vehicular exhaust emissions. Moreover, for the Local Plan as a whole, traffic and air quality modelling was undertaken that modelled two transects within the Kirk Deighton SAC each travelling from 0m to 200m from the nearest modelled road and intersected every 5m with receptor points. The assessment concluded that the Local Plan would not lead to changes in nitrogen deposition greater than 1% of the relevant critical load for the habitats within the Kirk Deighton SAC and will therefore not adversely affect the integrity of the SAC. Natural England were consulted and confirmed that they were satisfied with both the assessment undertaken and the conclusions reached.
- 3.6 Kirk Deighton SAC is sensitive to negative changes in water quality due its great-crested newts. A significant increase in phosphorus levels (the limiting nutrient in freshwater environments) could lead to eutrophication, with concomitant low DO levels and high turbidity. High turbidity, in particular, has been observed in the SAC previously and could lead to the blocking of gills, hampering newt displaying behaviour and reducing invertebrate numbers. However, at 6km Malkiln New Settlement is too far from the SAC for surface water runoff to be a concern for the SAC. Moreover, the Appropriate Assessment of the Local Plan examined the potential for hydrological impacts from growth in Harrogate borough and concluded that since Local Plan policy CC1 will not permit development where it would have an adverse effect on watercourses or increase the risk of flooding elsewhere, the Local Plan will not have a significant effect on either water quality or quantity.
- 3.7 In March 2022 Natural England issued a letter to a series of local authorities flagging that a nutrient neutrality requirement would apply to any net increase in residential populations of particular catchments within those authorities, in order to protect certain SACs and SPAs. However, Harrogate Borough Council is not one of the affected local authorities.
- 3.8 As such no impact pathways connecting to Kirk Deighton SAC or any other European sites have been identified. For completeness, each DPD policy is subject to a Test of Likely Significant Effects in Appendix B.

Other plans and projects

- 3.9 The most relevant plan or project (besides the Harrogate Local Plan, which has already been discussed) to be considered in combination with the New Settlement DPD would be the Leeds Local Plan, since Wetherby is within Leeds boundary and is located c. 320m from Kirk Deighton SAC at its closest. Development at

Wetherby would not reduce this separation distance since the intervening zone is all within Harrogate Borough. Moreover, the Leeds Site Allocations DPD, adopted in 2019, does not identify any housing sites for development in that part of Wetherby that lies within 500m of the SAC. As such, development in Leeds will not have a likely significant effect on Kirk Deighton SAC.

- 3.10 Since there is no impact pathway connecting the proposal with any European sites there is no mechanism for there to be a likely significant effect either alone, or in combination with other projects and plans, on any European site.

4. Conclusion

- 4.1 It can be concluded with a high degree of confidence there will not be a likely significant effect from the proposal on any European sites, either alone or in combination with other projects and plans.

Appendix A European sites within 10km of Malkiln New Settlement

Kirk Deighton SAC

Introduction

- 4.2 Kirk Deighton SAC is 3.99ha in size, comprising improved grassland (95%), an inland water body (3%) and woody plant cultivations (2%). The SAC lies on the outskirts of the village of Kirk Deighton. It is a lowland site on neutral clay soils within a wider agricultural and pasture-led landscape.
- 4.3 Despite its relatively small size, the site supports an exceptionally large population of great-crested newts *Triturus cristatus* concentrated in a shallow breeding pond. The pond lies amidst pasture and mature hedgerows, which provide essential feeding and hibernation habitats for the newts. Other amphibian interest in the SAC includes smooth newt *Triturus vulgaris* and common frog *Rana temporaria*.

Qualifying Features⁷

- 4.4 Annex II species that are a primary reason for selection of this site:
- Great-crested newt *Triturus cristatus*

Conservation Objectives⁸

- 4.5 With regard to the SAC and the natural habitats and/or species for which the site has been designated (the 'Qualifying Features' listed below), and subject to natural change;
- 4.6 Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring;
- The extent and distribution of the habitats of qualifying species
 - The structure and function of the habitats of qualifying species
 - The supporting processes on which the habitats of qualifying species rely
 - The populations of qualifying species, and,
 - The distribution of qualifying species within the site.

Threats / Pressures to Site Integrity⁹

- 4.7 Natural England's Site Improvement Plan highlights the following threats and pressures to the site integrity of the Kirk Deighton SAC:
- Change in land management
 - Habitat fragmentation

⁷ Available at: <https://sac.jncc.gov.uk/site/UK0030178> [Accessed on the 10/11/2020]

⁸ Available at: <http://publications.naturalengland.org.uk/publication/4695122595807232> [Accessed on the 10/11/2020]

⁹ Available at: <http://publications.naturalengland.org.uk/publication/5267982863302656> [Accessed on the 10/11/2020]

Appendix B HRA Screening of DPD Policies

Policy	Likely Significant Effects?
Net zero movement and active travel	None – promotion of active travel will be environmentally positive.
Smart town strategy	None – the analysis in Section 3 concludes that Maltkiln New Settlement would be too far from internationally important wildlife sites, and insufficiently connected to them, for a likely significant effect to arise.
Net zero energy supply and use	None – net zero energy supply will be environmentally positive.
Embodied carbon and life-cycle emissions	None – this policy will be environmentally positive.
Supporting inclusive flexible living and working	None – flexible working does not present any impact pathways linking to internationally important wildlife sites
Climate resilience	None – this policy does not present any impact pathways linking to internationally important wildlife sites
Development framework	None – the analysis in Section 3 concludes that Maltkiln New Settlement would be too far from internationally important wildlife sites, and insufficiently connected to them, for a likely significant effect to arise.
Master-planning design principles	None – this policy does not present any impact pathways linking to internationally important wildlife sites
Strategic green gap	None – this policy does not present any impact pathways linking to internationally important wildlife sites
Flood risk and drainage	None – this policy will be environmentally positive.
Green and blue infrastructure strategy	None – this policy will be environmentally positive.
Providing biodiversity net gain	None – this policy will be environmentally positive.
Open space and sport provision	None – this policy does not present any impact pathways linking to internationally important wildlife sites
Protecting Aubert Ings SSSI	None – this policy will be environmentally positive.
Designated Heritage Assets - Kirk Hammerton Conservation Area, Old Thornville and Providence House	None – this policy will be environmentally positive.
Cattal Bridge	None – this policy will be environmentally positive.
Church of St John the Baptist, Hunsingore	None – this policy will be environmentally positive.
Milestone near Providence House	None – this policy will be environmentally positive.
Archaeology	None – this policy will be environmentally positive.

Policy	Likely Significant Effects?
Non-designated heritage assets	None – this policy will be environmentally positive.
Housing mix and density	None – this policy does not present any impact pathways linking to internationally important wildlife sites
Affordable housing	None – this policy does not present any impact pathways linking to internationally important wildlife sites
Specialist housing	None – this policy does not present any impact pathways linking to internationally important wildlife sites
Self and custom-build housing	None – the analysis in Section 3 concludes that Malkiln New Settlement would be too far from internationally important wildlife sites, and insufficiently connected to them, for a likely significant effect to arise.
Local centre	None – this policy does not present any impact pathways linking to internationally important wildlife sites
Employment	None – the analysis in Section 3 concludes that Malkiln New Settlement would be too far from internationally important wildlife sites, and insufficiently connected to them, for a likely significant effect to arise.
Education provision	None – this policy does not present any impact pathways linking to internationally important wildlife sites
Social and community facilities	None – this policy does not present any impact pathways linking to internationally important wildlife sites
Sustainable travel and connectivity	None – this policy will be environmentally positive.
Walking and cycling	None – this policy will be environmentally positive.
Cycle parking and storage	None – this policy does not present any impact pathways linking to internationally important wildlife sites
High quality public transport: rail infrastructure	None – the analysis in Section 3 concludes that Malkiln New Settlement would be too far from internationally important wildlife sites, and insufficiently connected to them, for a likely significant effect to arise.
High quality public transport: bus provision	None – the analysis in Section 3 concludes that Malkiln New Settlement would be too far from internationally important wildlife sites, and insufficiently connected to them, for a likely significant effect to arise.
Street hierarchy	None – this policy does not present any impact pathways linking to internationally important wildlife sites
Highway mitigation and improvements	None – the analysis in Section 3 concludes that Malkiln New Settlement would be too far from internationally important wildlife sites, and insufficiently connected to them, for a likely significant effect to arise.
Minimising car usage	None – this policy will be environmentally positive.

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