

East Herts Council Non-Key Decision Report

Date: 28 February 2022

Report by: Councillor Jan Goodeve – Executive Member for Planning and Growth

Report title: Kingsmead Draft Neighbourhood Plan 2021, Pre-Submission SEA Screening Report

Ward(s) affected: Hertford Kingsmead

Summary

- The purpose of this report is to determine whether or not a Strategic Environmental Assessment (SEA) and/or a Habitats Regulations Assessment (HRA) of the emerging Kingsmead Neighbourhood Area Plan is required.
- The report concludes that the Neighbourhood Plan does not require either a Strategic Environmental Assessment (SEA) or a Habitats Regulations Assessment (HRA) because the Plan is not likely to have any significant environmental effects.

RECOMMENDATIONS FOR DECISION: That Hertford Town Council be advised that:

- (A) In accordance with Regulation 9 of the Environmental Assessment of Plans and Programmes Regulations 2004, the District Council, as the responsible authority, has determined that an environmental assessment of the emerging Kingsmead Neighbourhood Area Plan is not required as it is unlikely to have significant environmental effects. In making this determination, the District Council has had regard to Schedule 1 of the Regulations and has carried out consultation with the consultation bodies; and**

(B) The emerging Hertford Neighbourhood Area Plan is unlikely to have a significant effect upon a Natura 2000 designation and therefore does not require an HRA.

1.0 Proposal(s)

1.1 In order for a neighbourhood plan to meet the Basic Conditions to proceed to Referendum, the Local Planning Authority must determine whether a neighbourhood plan requires a Strategic Environmental Assessment (SEA), and/or a Habitats Regulations Assessment (HRA). This report determines whether the Kingsmead Neighbourhood Area Plan requires either.

2.0 Background

SEA Legislative Background

- 2.1 The European Directive 2001/42/EC requires a Strategic Environmental Assessment (SEA Directive) to be carried out for certain plans and programmes to assess their effects on the environment. This Directive was transposed in law by the Environmental Assessment of Plans and Programmes Regulations 2004.
- 2.2 Neighbourhood Plans fall within the scope of this legislation. They are a plan as defined by Article 3(2) of the SEA regulations and Regulation 5 paragraph 2 of the Environmental Assessment of Plans and Programmes Regulations 2004.
- 2.3 Under Article 3(2) of the SEA Directive and Regulation 5 paragraph 6 of the Environmental Assessment of Plans and Programmes Regulations 2004, Strategic Environmental Assessment (SEA) is only required for documents that determine land use in small areas at the local level where it is considered that they are likely to have 'significant environmental effects'. This is carried out through a screening determination.

- 2.4 The role of a screening exercise is to determine whether the effect of the implementation of a plan or programme is likely to have a significant effect on the environment.

HRA Legislative Background

- 2.5 The Conservation of Habitats and Species Regulations 2010 (as amended in 2012) transpose the requirements of the European Habitats Directive 92/43/EEC into UK law. The Habitats Directive and Regulations afford protection to plants, animals and habitats that are rare and vulnerable in a European context.
- 2.6 Habitats Regulations Assessment (HRA) is a systematic process through which the performance of a plan or project can be assessed for its likely impact on the integrity of a European Site. European Sites, also referred to as Natura 2000 sites, consist of Special Protection Areas (SPA), Special Areas of Conservation (SAC); Potential Special Protection Areas and candidate Special Areas of Conservation (pSPA and cSAC); and listed or proposed Ramsar sites.
- 2.7 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 and projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives'.
- 2.8 The first stage of HRA is to screen a plan or programme to identify if there are likely to be any significant effects on Natura 2000 sites. This will indicate whether a full Appropriate Assessment is required.

3.0 Reason(s)

SEA:

- 3.1 To decide whether a draft neighbourhood plan might have significant environmental effects, its scope needs to be assessed against the criteria set out in Schedule 1 to the Environmental Assessment of Plans and Programmes Regulations 2004.
- 3.2 The local planning authority is required to put in place a process to provide a screening opinion to the qualifying body (in this case, Hertford Town Council) on whether the proposed neighbourhood plan will require a Strategic Environmental Assessment (SEA). The qualifying body should work with the local planning authority to ensure that the authority has the information that it needs to provide a screening opinion.
- 3.3 When deciding on whether proposals are likely to have significant environmental effects, the local planning authority is required to consult Historic England, Natural England and the Environment Agency (the 'statutory consultees').
- 3.4 Hertford Town Council (the qualifying body) has produced a draft Neighbourhood Plan for Kingsmead ward in Hertford. The draft Neighbourhood Plan contains policies on:
 - Biodiversity and Local Green Spaces
 - Important views
 - Heritage and design
 - Homes and development
 - Business development
 - Sustainable transport
 - Community facilities
- 3.5 The Neighbourhood Plan does not allocate any sites for development or support additional development beyond that

which is allocated in the District Plan. The policies of the Neighbourhood Plan relating to design; designation of local green space; sustainable transport and environmental sustainability aim to have a positive impact on the ward's local character and natural environment.

- 3.6 Hertford Town Council has prepared a Strategic Environmental Assessment Screening Report. The Strategic Environmental Assessment concludes that the Kingsmead Neighbourhood Area Plan is not likely to have significant environmental effects. A copy of the Strategic Environmental Assessment Screening Report is included, for information, at **Appendix A**.
- 3.7 The Environment Agency, Natural England and Historic England have all been consulted on the draft Neighbourhood Plan. Both Natural England and Historic England confirmed that an SEA is not required for the Neighbourhood Plan as there are unlikely to be significant environmental effects.
- 3.8 The Environment Agency has noted in their response that they are currently prioritising their limited resources and focusing on strategic plans where environmental risks and opportunities are highest. As such, they have not directly confirmed if an SEA is required. Instead they have sent an advice note (as at **Appendix B**), which provides general information about flood risk and the protection of environmental assets, to help inform the Council's decision. There are areas of flood zone 3 in the ward, but on the basis of this guidance, it is considered there are unlikely to be significant effects arising from the neighbourhood plan because the Neighbourhood Plan (1) is not allocating sites for development; (2) proposals are consistent with national and local flood risk policy; and (3) it includes policies that will have a positive impact on the environment, for example, designation of the Meads as Local Green Space and policies promoting biodiversity and green infrastructure. Therefore, it is not considered that an SEA is required for this

Neighbourhood Plan. The responses from the consultees are attached at **Appendix B**.

HRA:

- 3.9 The Local Authority is the 'competent authority' under the Conservation of Habitats and Species Regulations 2010, and needs to ensure that Neighbourhood Plans have been assessed through the Habitat Regulations process. This looks at the potential for significant impacts on nature conservation sites that are of European importance, also referred to as Natura 2000.
- 3.10 There are three key Natura 2000 sites that lie partly within East Hertfordshire – Lee Valley SPA; Lee Valley Ramsar site; and Wormley-Hoddesdonpark Woods SAC (although there are also sites in neighbouring authorities, namely Epping Forest SAC). Because Neighbourhood Plans must conform with the development plan for the area (in this case, the East Herts District Plan), which has been subject to an HRA, the key issue will be whether the Neighbourhood Plan will potentially result in an impact not previously considered.
- 3.11 The HRA on the District Plan concludes that the District Plan will not result in a likely significant effect, either alone or in combination, upon any European sites. In particular Policy NE1 of the District Plan provides for the protection of internationally designated sites.
- 3.12 The Neighbourhood Plan does not allocate any additional sites or growth not accounted for in the District Plan. Therefore the Kingsmead Neighbourhood Area Plan is not thought to generate any additional impact not previously considered.
- 3.13 Given the conclusions of the HRA on the District Plan and the fact that the Neighbourhood Plan does not allocate any further development sites and is generally in accordance with the

policy approach set out in the District Plan (which has been subject to HRA) it is concluded that an HRA on the Neighbourhood Plan is not required.

4.0 Options

4.1 In order for a Neighbourhood Plan to meet the Basic Conditions it must be compatible with relevant legal obligations. Therefore the Local Planning Authority must determine whether the Plan requires a Strategic Environmental Assessment or Habitats Regulations Assessment. If the determination is not made the process will not be legally compliant.

5.0 Risks

5.1 A Neighbourhood Plan cannot proceed through examination without fulfilling the legal requirements of the SEA and HRA process.

6.0 Implications/Consultations

6.1 The Neighbourhood Plan process requires statutory public consultation.

Community Safety

No

Data Protection

No

Equalities

No

Environmental Sustainability

The recommendations in this report ensure that the Neighbourhood Plan has considered environmental sustainability.

Financial

No

Health and Safety

No

Human Resources

No

Human Rights

No

Legal

No

Specific Wards

Kingsmead Ward in Hertford

7.0 Background papers, appendices and other relevant material

7.1 **Appendix A:** Kingsmead Neighbourhood Area Plan SEA Screening Report

7.2 **Appendix B:** Statutory Consultee Responses

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