

Investing in the A40 - Long Term Strategy
(Note referred to at paragraph 16 of the report)

Habitats Regulations Assessment:
A40 Strategy

Purpose of this note

The purpose of this note is to summarise the application of the *Conservation of Habitats and Species Regulations 2010 (as amended)* [the Habitat Regulations] particularly in the context of ongoing development of the highways network in Oxfordshire. It should be noted that this is not a full description of the regulations or their application.

The focus of the Habitat Regulations¹ is a network of habitats and species that are considered important at a Europe-wide level – the Natura 2000 Network. Within the UK the sites that support these habitats and species are designated as **Special Areas of Conservation** (SAC). These sites are protected under UK and European law.

Special Areas of Conservation in Oxfordshire

There are seven Special Areas of Conservation that fall entirely, or partly, within Oxfordshire:

- Oxford Meadows
- Cothill Fen
- Little Wittenham
- Aston Rowant
- Chilterns Beechwoods
- Hackpen Hill
- Hartslock Wood

Habitats Regulations Assessment and when is it needed?

Habitats Regulations Assessment is the process that needs to be carried out to assess whether there are any “likely significant effects” on Special Areas of Conservation from any proposals and informs the decision making process. The definition of “likely significant effects” is stricter than in everyday language and, based on case law, in this statutory context is “a possible significant effect” and “one whose occurrence cannot be excluded on the basis of objective information”.²

Oxfordshire County Council has the role of “competent authority” under the Habitat Regulations. This means that the Council is responsible for carrying out the Habitats Regulations Assessment for highways schemes and its own projects and plans, such as the Minerals & Waste Local Plan, Local Transport Plan 4, and planning

¹ Regulations 8(1)(a) of *The Conservation of Habitats & Species Regulations 2010, as amended*.

² DTA Publications, HRA Handbook 2015, accessed online 10 November 2015

applications that it determines (e.g. Regulation 3 and Minerals & Waste applications).

Projects or plans that might have a significant adverse effect on the integrity of a SAC must not proceed unless there are both no alternative solutions and “imperative reasons of overriding public interest”³. If these tests are met, then the Secretary of State would secure any necessary compensatory measures are taken⁴.

It appears that it is rare for the Imperative Reasons for Overriding Public Interest test to be judged to have been met⁵

What Habitats Regulations Assessment work has been undertaken for Local Transport Plan 4?

Initial work on the Habitats Regulations Assessment has been carried out for the Minerals & Waste Local Plan and Connecting Oxfordshire (Local Transport Plan 4). The conclusions of the initial work on Local Transport Plan 4 were that there are three Special Areas of Conservation where there is a potential risk of likely significant effects from growth in Oxfordshire and associated transport proposals. Of these three sites Oxford Meadows SAC is notable as it abuts the A40. Given the lack of detailed knowledge about where development would be located and what impact transport schemes would therefore have on the traffic levels and travel patterns, more detailed assessment of the impacts on SAC sites has not yet been carried out, instead these are to be done at scheme level (such as through the work on the A40 Strategy).

Oxford Meadows Special Area of Conservation is primarily designated for its historic lowland hay meadows, a nationally rare priority habitat. Oxford Meadows SAC consists of four separate Sites of Special Scientific Interest and supports the largest of only two populations of Creeping Marshwort in the UK, the other site also being in Oxfordshire. The conservation interest of the SAC is influenced by a complex hydrology.

Appendix 1 contains a map of Oxford Meadows SAC and other sites with conservation designations in the surrounding area.

At what stage should Habitats Regulations Assessment be carried out and what does this involve?

Habitats Regulations Assessment is a “step-wise, decision-influencing process” which must be carried out in the correct order at appropriate stages of scheme development. If tests are not applied or are carried out in the wrong order, this could leave a decision open to challenge as well as creating unnecessary work, resulting in avoidable excessive time and cost.⁶

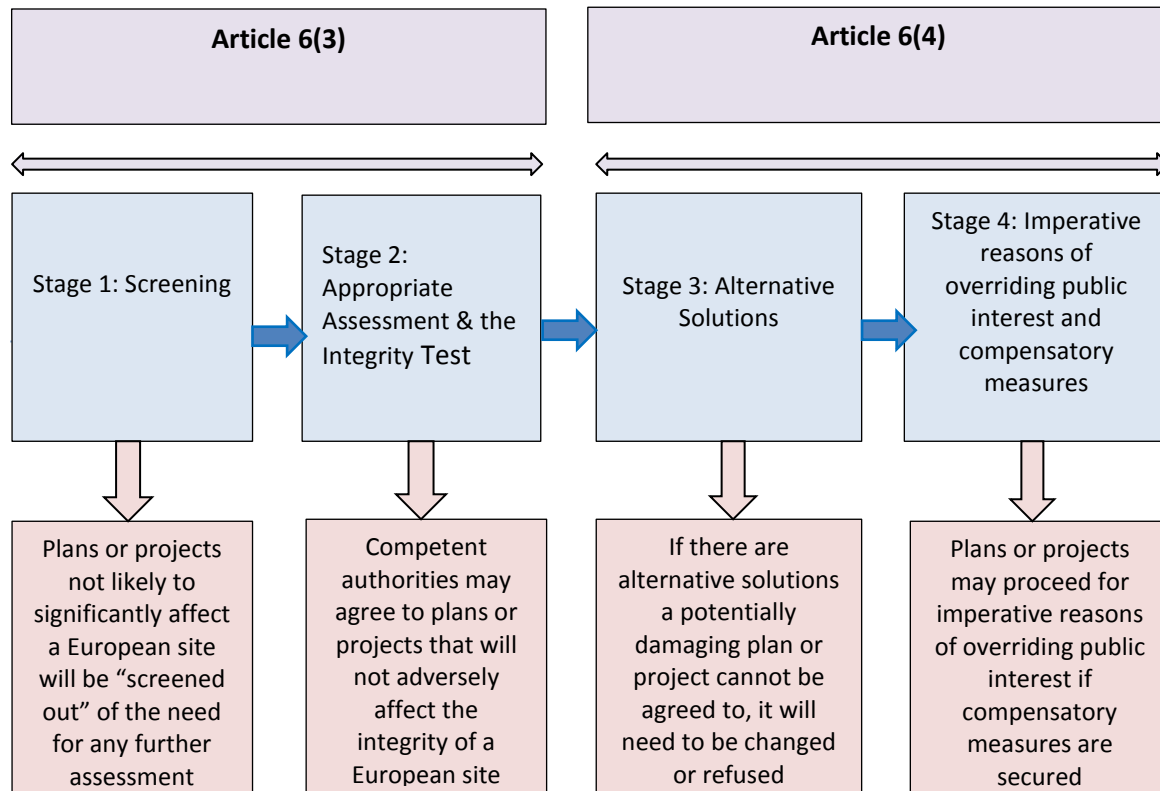
³ DTA Publications, HRA Handbook 2015

⁴ Regulation 66

⁵ DTA Publications, HRA Handbook 2015

⁶ DTA Publications, HRA Handbook 2015

There are four main stages of Habitats Regulations Assessment as shown in this diagram⁷:



Within each of the four main stages are various steps that must be followed. These include that within Stage 2 the project or plan must be assessed both alone and in combination with other projects or plans⁸. Specialist skills are needed to carry out a Habitats Regulations Assessment.

If a plan or project could have a likely significant effect on the integrity of a Special Area of Conservation then OCC are required to consider whether there are alternative solutions. An example from case law on this issue is C-23904, European Commission v Portugal (the Castro Verde Special Protection Area case). In this case the European Court found against Portugal who had failed to study certain alternative routes when deciding the route of the A2 Lisbon to Algarve motorway.

Issues that need to be considered when OCC are developing strategies and plans including new highways development schemes include:

- Assessment of all possible significant effects of proposed scheme options on SAC sites. These must include both indirect as well as direct effects, e.g. air quality, water quality and hydrology as well as land-take.

⁷ DTA Publications, HRA Handbook 2015

⁸ DTA Publications, HRA Handbook 2015

- The assessments must be sufficient to determine whether a likely significant effect may occur and, where necessary, identify mitigation options to counter-act the impacts of the proposals.
- If there are any likely significant effects on a SAC after mitigation options are considered then alternative scheme solutions must be assessed.
- If likely significant effects remain after alternative scheme solutions and mitigation options have been considered then the scheme that has the least impact must meet the test of Imperative Reasons for Overriding Public Interest and compensatory measures be secured if it is to proceed.

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Appendix 1: Map of Oxford Meadows SAC



SAC - Special Area of Conservation (an international designation)
SSSI - Site of Special Scientific Interest (a national designation)
Local Wildlife Site/Proposed Local Wildlife Site - a local designation