



ECONOMY REGENERATION & HOUSING COMMITTEE

Monday, 18 September 2023

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| REPORT TITLE: | ADOPTION OF WIRRAL INTERIM APPROACH TO AVOID AND MITIGATE RECREATIONAL PRESSURE |
| REPORT OF: | THE DIRECTOR OF REGENERATION AND PLACE |

REPORT SUMMARY

This report seeks approval for the Council to adopt the Wirral Interim Approach to Avoid and Mitigate Recreational Disturbance as a material consideration in the determination of planning applications. The approach provides a mechanism to fund measures, through a tariff on new housing development of 10 or more units, to avoid and mitigate disturbance to birds from human activity on the internationally designated foreshores around the Wirral coast arising from additional visits to the coast generated by new housing development.

The Wirral Interim approach forms part of a wider Liverpool City Region Recreational Management Strategy (LCR RMS) initiative to tackle this issue. The Wirral Interim approach has been produced as an interim measure due to delays in implementing the LCR RMS, which is expected to come into force in 2024. The Wirral Interim approach document was published in draft alongside the Submission Draft Wirral Local Plan 2021-2037 in July 2022 and is in the Local Plan Examination Library as document reference ECC27. The LCR RMS will be implemented through a joint Supplementary Planning Document, and the draft scoping document (currently out to consultation) is appended to this report for noting.

The Local Plan will support all five themes of the Wirral Plan 2021-26: Inclusive Economy, Safe & Pleasant Communities, Sustainable Environment, Brighter Futures and Active & Healthy Lives.

This matter is a Key Decision as the Interim Approach to Avoid and Mitigate Recreational Pressure, and the Local Plan to which it relates, has the potential to significantly impact all wards within the Borough.

RECOMMENDATION/S

The Economy Regeneration and Housing Committee is recommended to approve the adoption of the Wirral Interim Approach to Avoid and Mitigate Recreational Pressure Document as a material consideration in the determination of planning applications.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 To ensure the Wirral Local Plan 2021-2037 and decisions on individual planning applications continue to be legally compliant with the provisions of the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”). The Liverpool City Region Recreational Management Strategy (LCR RMS) is in development but has been delayed due to the need to update the evidence base. In common with other Liverpool City Region (LCR) districts, an interim mechanism has to be put in place to address this issue while the LCR RMS is completed. A draft Information and Guidance note on the Interim Approach was published alongside the Submission Draft Wirral Local Plan 2021-2037 in July 2022 and can be viewed here: <https://www.wirral.gov.uk/files/ecc27-wirral-interim-approach-avoid-and-mitigate-recreation-pressure-2022-v2.pdf/download?inline?inline>. Formal adoption of the Information and Guidance note as a material consideration in the determination of planning applications will ensure that developer contributions can be secured and distributed. Funds generated through tariff contributions will be spent on a combination of management measures on the coast and also enhancements to Arrowe Park, to increase its attractiveness as an alternative destination to the coast.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 Not to participate in the LCR RMS has been considered. This would place the onus solely on the Council and individual developers to demonstrate compliance with the requirements of the Habitats Regulations in relation to recreational disturbance impacts which would be less efficient, more costly and onerous. Natural England’s willingness to enter into a statement of Common Ground with the Council in relation to the Local Plan is on the basis that the Council will adopt the Interim Approach as a material planning consideration.

3.0 BACKGROUND INFORMATION

- 3.1 The Wirral Coastline is of national and international importance for nature conservation. The network of European sites around the Wirral Coast comprise the Dee Estuary, Mersey Estuary and Mersey Narrows and North Wirral Foreshore Special Protection Areas for birds, and the Dee Estuary Special Areas of Conservation for species and habitats. These sites are additionally designated as Ramsar sites that are recognised as internationally important wetlands. Following withdrawal of the UK from the European Union, the network of European sites are now referred to as the National Sites Network.
- 3.2 The National Sites Network is subject to strict legal protection which conveys specific duties on public bodies such as Wirral Council and sets out stringent tests to be met before Local Plans can be adopted and projects can be permitted. A precautionary approach is embedded in the Habitats Regulations, that include a requirement to demonstrate that impacts will not occur, rather than proof that they will.

- 3.3 Additional residential development facilitated through Local Plans has the potential to increase the number of visitors to the coast and therefore the potential for disturbance. Birds can be easily disturbed by human activities on the foreshore causing them to take flight which wastes energy, reducing their chances of survival on their migratory journey back to their breeding grounds at the end of winter. As a result, mitigation or avoidance of recreational disturbance of the protected foreshores around the coast resulting from new residential development is an issue which is of concern to Natural England and is having to be addressed by all the LCR constituent authorities through their local Plans.
- 3.4 The LCR constituent authorities along with West Lancashire Council are therefore preparing a Recreation Mitigation Strategy (LCR RMS) that will enable the local authorities to meet their legal duties to protect European wildlife sites from the impacts of recreation associated with housing development both in terms of the allocation of sites in local plans and the consideration of individual planning applications. The LCR RMS will take a strategic approach to visitor and recreation pressure management for the internationally important nature sites in the LCR and will govern how the local authorities plan to mitigate against harm from recreation pressure.
- 3.5 This work is being managed by Merseyside Environmental Advisory Service (MEAS) on behalf of the LCR constituent authorities. Footprint Ecology was commissioned at the end of 2017 to undertake the bulk of the work. An initial evidence document was published on the MEAS web site in July 2021. The main element of the approach is the introduction of a financial levy on new qualifying residential development which is used to fund Site Access Management and Monitoring Measures and/or the enhancement of suitable alternative greenspace sites in inland locations, tied to a policy in the Local Plan.
- 3.6 The LCR RMS is at advanced draft stage, but its completion has been delayed because of the need to update the original baseline evidence. The LCR districts agreed to fund and participate in further evidence gathering in the form of visitor surveys to facilitate completion of the RMS. This work has recently been completed and the survey reports published on the MEAS web site. This updated survey work has however meant that completion and potential adoption of the RMS has been delayed.
- 3.7 While the LCR RMS has been paused, Natural England have been requiring individual local authorities to put in place their own interim approaches to dealing with recreational disturbance to be put in place alongside their Local Plans. Liverpool and Halton have already progressed their interim approaches through their Local Plan examinations using a template document produced by MEAS. These Interim Approach documents are not Supplementary Planning Documents – they are guidance notes which will be used as a basis for securing developer contributions. However, like an SPD, they are linked to relevant Local Plan Policies.
- 3.8 Wirral has prepared its own Interim Approach document (Wirral IA) which was published in draft alongside the Submission Draft Wirral Local Plan 2021-2037 in July 2022 and remains in the Local Plan Examination Library as document reference ECC27 and can be viewed via this link: <https://www.wirral.gov.uk/files/ecc27-wirral-interim-approach-avoid-and-mitigate-recreation-pressure-2022->

[v2.pdf/download?inline?inline](#). It was published at the Regulation 19 stage in 2022 alongside the Submission Draft Local Plan for the receipt of representations, which are currently being considered through the Local Plan Examination. The Wirral IA is linked to Local Plan Policies WS5.5 and WD3 which it is intended will provide the necessary planning policy basis to protect the European designated sites from the quantum of housing development in the plan period (alone and in combination) to comply with the Habitats Regulations. As part of the Examination process the Council agreed a Statement of Common Ground with Natural England in April 2023 which commits the Council to seeking approval of the Wirral IA as a material planning consideration.

- 3.9 Based on well-established practice elsewhere in the UK and the emerging LCR RMS, there are two key components of the Wirral IA to provide for mitigation:
- Suitable Alternative Natural Greenspace must be appropriately located, of sufficient scale and accessible to residents of existing and new development for them to be effective alternatives to visiting the coast; and
 - On-European Site Access Management and Monitoring Measures which are appropriate for Wirral and which can be targeted locally.
- 3.10 Based on an agreed position across the LCR, only developments of 10 or more net additional units will qualify for the mitigation tariff. This includes all houses, flats, houses in multiple occupation and supported living accommodation which come forward for planning consent. Residential care homes and nursing care home accommodation is excluded from the Wirral IA as it is considered that the residents' access to the European sites would be limited and unlikely to contribute to recreational disturbance. The mitigation tariff is weighted to ensure that the impact of development of less than 10 units will be covered by those of 10 or more units.
- 3.11 Mitigation measures are set out in detail in the Wirral IA document from paragraph 8.5 onwards and in Appendix 4. These are focused on three broad areas:
- Communications, marketing and education initiatives – such as targeted awareness-raising of specific activities/user groups, increasing coastal ranger staffing hours targeted on raising awareness with visitors to the coast, installation of signage and provision of householder information packs for new housing developments.
 - Site-specific visitor management and bird refuge projects – such as signage and interpretation, footfall counters, infrastructure provision such as path management and fencing, creation of dog walking routes.
 - New/enhanced strategic alternative greenspace (SANG). In the short to medium term, Arrowe Park will be the focus of enhancements (and costed measures are listed in Appendix 4 of the Interim approach document). In the longer term, further consideration will be given to the potential at other locations listed in the Interim Approach document.

The prioritisation of these mitigation measures will be agreed in consultation with Natural England and the constituent LCR authorities to ensure the measures align with the emerging LCR RMS mitigation measures.

- 3.12 The Wirral IA encourages applicants and developers to 'opt in' to the interim approach and make a direct mitigation payment through legally binding Section 106 planning obligations where on-development site mitigation is not possible. Applicants/ developers who chose not to opt into the Wirral IA will nonetheless be required to use a method which uses the same principles as set out in the emerging LCR RMS. In all likelihood this will be less efficient, more costly and onerous for applicants. It also carries a probability that a mitigation payment will nonetheless still be required when the Council verifies the assessment as part of a project-level Habitats Regulations Assessment prior to it being accepted.
- 3.13 There will be a requirement to monitor the effectiveness of the Wirral IA and Table 4 of the Wirral IA document sets out a proposed monitoring framework which will record the mitigation applied, how it relates to development pressure and whether it is effective. If necessary, adjustments to the applicable measures will be made in consultation with Natural England.
- 3.14 Once the LCR RMS is in place in 2024, a key implementation mechanism for the RMS will be through a joint Recreation Mitigation on the Coast supplementary planning document (SPD) and initial consultation on the scope of this document commenced in August 2023 with a view to final adoption by spring/summer of 2024. The scoping document can be found at Appendix 1 of this report. The draft SPD to follow will be subject to public consultation in line with the Wirral's Statement of Community Involvement.

4.0 FINANCIAL IMPLICATIONS

- 4.1 The mitigation tariff per dwelling is £280.26 which should be adjusted each year in line with the Retail Price Index. As the sums relate to legal requirements under the Habitats Regulations they are not subject to viability considerations. Based upon the potential housing delivery between 2022-2024 (following which it is anticipated the LCR RMS will be adopted) from the sites allocated in the emerging Wirral Local Plan for 10 or more dwellings the estimated potential funding for mitigation from the Wirral IA in 2022-2024 is £113,225.04.
- 4.2 Any funding received through this mechanism would be ringfenced for mitigation measures of the type outlined in the Wirral IA document.
- 4.3 Any local authority that has received developer contributions through section 106 planning obligations must publish online an infrastructure funding statement by 31 December for the preceding financial year. Such a statement is required to detail monies received through developer contributions secured via agreements under section 106 of the Town and Country Planning Act 1990 and how such sums have been spent in the previous year.

5.0 LEGAL IMPLICATIONS

- 5.1 The legal protection for the National Sites Network of nature conservation sites is enshrined in the Habitats Regulations. Where Wirral Council as competent authority is undertaking or implementing a plan or project of its own, such as the Wirral Local Plan, or authorising others to do so, such as granting planning permission, the duties

set out within the Habitats Regulations in relation to consideration of plans and projects are applicable.

- 5.2 The Habitats Regulations assessment of the Wirral Local Plan 2021-2037 (Examination library reference SD3) states in paragraph 6.5 that the Council is developing an adequate Interim Approach to mitigate recreational pressure and is a signatory to the future RMS (and these are both included in Plan policy). It concludes that adverse effects on Wirral's estuarine and coastal European sites regarding recreational pressure can therefore be excluded.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

- 6.1 The operation of the Interim Approach is expected to be managed by existing staff resources within the Regeneration and Place and Neighbourhood Services Directorates.

7.0 RELEVANT RISKS

- 7.1 Paragraph 2.1 of this report details the implications of not participating in the LCR RMS. Failure to comply with the requirements of the Habitats Regulations could result in the Local Plan being found to be not legally compliant by the Examining Inspectors. Individual planning applications would be subject to objection by Natural England in this regard. This could result in additional cost and reputational harm to the Council.
- 7.2 The approach being promoted through the Wirral IA and the LCR RMS has been implemented successfully elsewhere in England such as the Solent, where similar circumstances apply. While work has been undertaken to assess the potential financial yield from the scheme based on best available understanding of likely future housing development, as an opt-in scheme linked to the submission of planning applications, the amount and timing of funding is not guaranteed, so the improvement measures for Arrowe Park in the Wirral IA might for example have to be wholly or partly funded from other sources, if the need for them became pressing. However as detailed in paragraph 3.13 monitoring and review is a key element of the LCR RMS and Wirral IA, with potential adjustments made to the scheme if necessary.

8.0 ENGAGEMENT/CONSULTATION

- 8.1 The draft Wirral IA document formed part of the package of documents published alongside the Submission Draft Local Plan 2021-2037 for the receipt of representations in 2022. Implementation of the LCR RMS is anticipated to be via an SPD. Technical consultation on the scope of this document commenced on the 14th August 2023 with a deadline for comments of 9th October, and the subsequent draft SPD will be subject to public consultation in line with Wirral's Statement of Community Involvement.

9.0 EQUALITY IMPLICATIONS

- 9.1 The Council has a duty under the Equality Act 2010, including the Public Sector Equality Duty, to ensure that the objectives and proposals within the Wirral Local

Plan eliminate unlawful discrimination (direct and indirect), as well as advancing equality of opportunity and fostering good relations between those with protected characteristics and all others. An Equality Impact Assessment has been prepared to inform the preparation of the Submission Draft Plan and can also be viewed here <https://www.wirral.gov.uk/files/wirral-local-plan-eia-pre-submission.pdf/download?inline>

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 As set out in the report, the Wirral IA is a measure to safeguard the internationally designated nature conservation sites around the Wirral Coastline. Part of the mitigation measures include awareness raising about the importance of these designated sites and the actions individuals can take to help protect them.

11.0 COMMUNITY WEALTH IMPLICATIONS

11.1 The Interim Approach to Avoid and Mitigate Recreational pressure does not have any direct community wealth implications. Adoption of the Local Plan will result in the delivery of significant development which will give opportunities for social wealth capture. The Submission Draft Plan includes a Social Value Policy (Policy WS 2 refers).

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APPENDICES

Appendix 1: Recreation Mitigation on the Coast Supplementary Planning Document draft Scoping Report July 2023

BACKGROUND PAPERS

Information And Guidance Note: Interim Approach To Avoid And Mitigate Recreation Pressure In Wirral <https://www.wirral.gov.uk/files/ecc27-wirral-interim-approach-avoid-and-mitigate-recreation-pressure-2022-v2.pdf/download?inline?inline>

Wirral Local Plan 2021-2037 Submission Draft <https://www.wirral.gov.uk/files/sd1-wirral-local-plan-2021-2037-submission-draft-may-2022-reg-19-publication-final-260422/download?inline>

Wirral Local Plan 2021-2037 Habitat Regulation Assessment (SD3): [file:///s02vs-uenv05.core.wcent.wirral.gov.uk/user\\$/EntwistleJC/Downloads/SD3%20-%20Habitat%20Regulations%20Assessment%20of%20the%20Wirral%20Local%20Plan%20April%202022.pdf](file:///s02vs-uenv05.core.wcent.wirral.gov.uk/user$/EntwistleJC/Downloads/SD3%20-%20Habitat%20Regulations%20Assessment%20of%20the%20Wirral%20Local%20Plan%20April%202022.pdf)

Final Statement of Common Ground with Natural England on Habitats Regulations Assessment of Wirral Local Plan and Approach for Addressing Recreational Disturbance

Issues to Protect the European sites of the Liverpool City Region from Recreation Pressure (WBC029)

https://www.wirral.gov.uk/sites/default/files/2023-05/WBC029%20Statement%20of%20Common%20Ground%20between%20WBC%20and%20Natural%20England%20V2_Redacted.pdf

LCR RMS Evidence Report 2021

http://www.meas.org.uk/media/11039/LCR_RMS_EvidenceReport_v24_Optv2.pdf

LCR RMS SPD Scoping document consultation:

<https://www.sefton.gov.uk/recreationmitigation>

The Conservation of Habitats and Species Regulations 2017

<https://www.legislation.gov.uk/uksi/2017/1012/contents/made>

SUBJECT HISTORY (last 3 years)

| Council Meeting | Date |
|---|-----------------------------|
| Full Council - Wirral Local Plan 2021-37 - Publication of Submission Draft Plan (Regulation 19) and Submission to Secretary of State for Examination (Regulation 22) | 21 st March 2022 |